

N. 9854

No. 14112

United States
Court of Appeals
for the Ninth Circuit

LOIS J. NEWMAN (formerly Lois J. Sender-
man), Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

FILED

MAR 4 5 1954

PAUL P. O'BRIEN
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

SAMUEL TAYLOR, Esq. (Withdrawn)
WALTER J. SCHWARTZ, Esq. (Withdrawn)
MARTIN GANG, Esq.,
LOUIS M. BROWN, Esq.,
NORMAN R. TYRE, Esq.

For Respondent:

EDWARD H. BOYLE, Esq.

DOCKET ENTRIES

1950

- Jul. 24—Petition received and filed. Taxpayer notified. Fee paid.
- Jul. 25—Copy of petition served on General Counsel.
- Sept. 19—Answer filed by General Counsel.
- Sept. 19—Request for hearing in San Francisco filed by General Counsel.
- Sept. 22—Notice issued placing proceeding on San Francisco calendar. Service of answer and request made.

1951

- Jan. 10—Hearing set March 12, 1951, San Francisco.
- Feb. 12—Motion to continue to the next San Francisco, California, calendar filed by taxpayer. Granted. 2/14/51 Copy served.
- Aug. 9—Hearing set October 29, 1951, San Francisco.

1951

Nov. 2—Hearing had before Judge Van Fossan, on merits. Petitioner's oral motion to file amended petition. Granted and oral motion for respondent to file answer to amended petition. Granted. Stipulation of facts with exhibits 1-A thru 12-L, inclusive, filed, amended petition and answer to amended petition filed at hearing. Copies served. Petitioner's brief due January 2, 1952. Respondent's brief due February 18, 1952. Petitioner's reply brief due March 19, 1952.

Nov. 20—Transcript of hearing November 2, 1951 filed.

Dec. 26—Stipulation to correct transcript filed.

Dec. 26—Motion for extension to February 4, 1952 to file brief filed by taxpayer. Granted. Copy served.

1952

Feb. 4—Motion for extension to March 4, 1952 to file brief filed by taxpayer. Granted. Copy served.

Mar. 3—Brief filed by taxpayer. Copy served.

Apr. 18—Motion for extension to May 2, 1952 to file brief filed by General Counsel. 4/21/52 Granted. Copy served.

May 2—Answer brief filed by General Counsel.

May 22—Motion for extension to July 2, 1952 to file reply brief filed by taxpayer. 5/22/52 Granted. Copy served.

1952

Jun. 23—Motion for extension to August 4, 1952 to file reply brief filed by taxpayer. 6/23/52 Granted. Copy served.

Aug. 4—Reply brief filed by taxpayer. 8/5/52 Copy served.

1953

Jan. 22—Findings of fact and opinion rendered, Van Fossan, Judge. Decision will be entered under Rule 50. Copy served.

Apr. 3—Respondent's computation filed.

Apr. 8—Hearing set May 13, 1953, on respondent's computation.

May 13—Hearing had before Judge Kern, on settlement under rule 50. Referred to Judge Van Fossan.

May 15—Decision entered, Van Fossan, Judge, Div. 9.

Jul. 10—Motion to withdraw as counsel Samuel Taylor and Walter G. Schwartz filed. Granted. Copy served.

Jul. 27—Entry of appearance of Martin Gang and Louis M. Brown as counsel filed.

Aug. 10—Petition for review by U. S. Court of Appeals, Ninth Circuit, with assignments of error filed by petitioner.

Aug. 10—Notice of filing petition for review with affidavit of service by mail attached filed by taxpayer.

Aug. 10—Petition for review by U. S. Court of Appeals, Ninth Circuit, filed by General Counsel.

1953

Aug. 13—Proof of service filed by taxpayer.

Aug. 14—Designation of contents of record with acknowledgment of service thereon filed by taxpayer.

Aug. 27—Entry of appearance of Norman R. Tyre as counsel filed.

Aug. 27—Motion for extension of time to November 6, 1953 for filing and docketing a consolidated record on review filed by General Counsel.

Aug. 28—Order enlarging time to November 6, 1953 for filing and docketing a consolidated record on review, entered.

Aug. 28—Proof of service of petition for review on counsel filed by General Counsel.

Oct. 16—Statement of points with statement of service by mail thereon, filed by General Counsel.

Oct. 16—Designation of contents of record on review with statement of service by mail thereon, filed by General Counsel.

The Tax Court of the United States

Docket No. 29650

LOIS J. NEWMAN (Formerly LOIS J. SEND-
ERMAN), Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency bearing the symbols IRA:EG:90-D:IB and dated May 3, 1950, and as a basis of her proceeding alleges as follows:

1. The petitioner is an individual residing in Sherman Oaks, California. The petitioner duly filed her gift tax return for the calendar year 1946 on or about June 23, 1947 with the Collector of Internal Revenue for the First District of California at San Francisco, California.

2. The notice of deficiency (a copy of which is attached hereto as Exhibit A and is incorporated by reference herein) was mailed to petitioner by registered mail on May 3, 1950.

3. The taxes in controversy are gift taxes for the calendar year 1946 in the amount of \$71,195.99.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(1) The Commissioner erred in determining that petitioner made a gift or gifts during the calendar year 1946.

(2) In the alternative to the assignment of error set forth in Paragraph 4 (1) above and assuming that this Court should determine that the Commissioner did not err as therein alleged, the Commissioner nevertheless erred in determining that the fair market value as of May 2, 1946, of an 8% interest as a limited partner in Aztec Brewing Company, a limited partnership, was \$175,000.00, and further erred in failing to determine that the fair market value of said interest as of said date was \$88,529.10.

(3) In the alternative to the assignment of error set forth in Paragraph 4 (1) above and assuming that this Court should determine that the Commissioner did not err as therein alleged, the Commissioner nevertheless erred in including among the gifts purportedly made by petitioner in the calendar year 1946, an item described in his notice of deficiency as "Overpayment of income tax and accrued interest for the years 1943-1945", the value of which item he determined to be \$64,035.05.

(4) In the alternative to the assignments of error set forth in Paragraphs 4 (1) and 4 (3) and assuming that this Court should determine that the Commissioner did not err as therein alleged, the Commissioner nevertheless erred in determining that the fair market value as of May 2, 1946 of the item described in his notice of deficiency as "Overpay-

ment of income tax and accrued interest for the years 1943-1945" was \$64,035.05.

5. The facts upon which petitioner relies as a basis for this proceeding are as follows:

(1) Petitioner's name at all times material hereto prior to December, 1944 was Lois J. Senderman. Petitioner's name from December, 1944 to the present has been Lois J. Newman.

(2) On or within a few days after January 1, 1943, petitioner established an irrevocable oral trust for the benefit of her minor daughter, Lois E. Senderman, and designated Richard S. Goldman as the trustee of such trust. Petitioner specifically provided that said trust was irrevocable. Petitioner thereby intended to make and did make an absolute and irrevocable gift, no part of which could or did revert to petitioner. A suit brought in the Superior Court of the State of California in and for the City and County of San Francisco (in the Matter of the Estate and Guardianship of Lois E. Senderman, a Minor, Number 103176) established that said oral trust was irrevocable.

(3) The corpus of said trust as of the date of its creation comprised 800 shares of stock in the Aztec Brewing Company, a California corporation. The fair market value of said 800 shares of stock as of said date was \$30,000.00. Petitioner duly included said gift in her gift tax return for the calendar year 1943, which return was duly filed with the Collector of Internal Revenue for the First District of California at San Francisco, California.

Said return showed that no gift tax was due from petitioner for said calendar year.

(4) Approximately six or seven months after the establishment of the oral trust referred to in Paragraph 5 (2), above, Richard S. Goldman, the trustee of said trust, executed a written declaration of trust which was intended to embody the terms of said oral trust. Petitioner and said trustee signed said declaration. Through the inadvertence and mistake of said trustee, said written declaration did not include an express provision that said trust was irrevocable.

(5) The trust created by petitioner as aforesaid terminated upon the death of Richard S. Goldman, the trustee thereof. Said trustee died on March 1, 1946. On that date the corpus and accumulated income of said trust became the absolute property of Lois E. Senderman, the beneficiary thereof. On May 2, 1946, Clarissa Shortall was duly appointed as the guardian of the estate of said Lois E. Senderman. The corpus and accumulated income of said trust was thereupon immediately transferred to said guardian. Petitioner made no gifts during 1946.

(6) The fair market value of the corpus and accumulated income of the trust created by petitioner as aforesaid was not in excess of \$228,831.49 as of the date of death of said Richard S. Goldman. The fair market value of the assets transferred to Clarissa Shortall as guardian, as aforesaid, was not in excess of \$228,831.49 as of the date of her appoint-

ment as guardian and as of the date of transfer of said assets to her.

(7) The fair market value of an 8% interest as a limited partner of Aztec Brewing Company, a limited partnership, was not in excess of \$88,529.10 as of the date of death of said Richard S. Goldman, as of the date of appointment of said Clarissa Shortall as guardian of the estate of said Lois E. Senderman and as of the date of delivery of the assets of the trust to said Clarissa Shortall.

(8) During each of the calendar years 1943 through 1946, income tax returns were duly filed on behalf of the trust created by petitioner as aforesaid (known as the Lois E. Senderman Trust) and by Lois E. Senderman, a minor, with the Collector of Internal Revenue for the First District of California at San Francisco, California. The tax, if any, shown thereon to be due was duly paid. By means of letters of the type commonly known as 30-day letters, addressed to said Trust and to said minor, both of which are dated August 25, 1949, the Internal Revenue Agent in Charge, San Francisco Division, has proposed overassessments in income tax in favor of said Trust and of said minor as follows:

Calendar Year	Taxpayer	Amount of Proposed Overassessment
1943	Lois E. Senderman, a minor	\$3,285.48
1944	Lois E. Senderman, a minor	6,776.42
1945	Lois E. Senderman Trust	52,701.57

Said Trust and said minor do not agree with said proposed overassessments and have duly protested them. No part of any of said proposed overassess-

ments nor any interest thereon has been received by said Trust or by said minor. Petitioner did not make a gift of any part of said purported overassessments or overpayments of income tax or of any accrued interest thereon during the calendar year 1946.

Wherefore, petitioner prays that this Court may hear this proceeding and determine that there is no deficiency in gift tax for the calendar year 1946 due from petitioner and that it may grant such further relief as may to it seem proper.

Dated: San Francisco, California, July 21, 1950.

Respectfully submitted,

/s/ SAMUEL TAYLOR,

/s/ WALTER G. SCHWARTZ,

Counsel for Petitioner

State of California,
County of Los Angeles—ss.

Lois J. Newman, being first duly sworn, deposes and says:

She is the petitioner named in the foregoing petition; she has read said petition and is familiar with the statements contained therein; and such statements are true except those stated to be upon information or belief, and those she believes to be true.

/s/ LOIS J. NEWMAN

Subscribed and sworn to before me this 11th day of July, 1950.

[Seal] /s/ EVELYN RUTH TATE,
Notary Public in and for the County of Los Angeles, State of California. My commission expires Dec. 9, 1953.

EXHIBIT "A"

U. S. Treasury Department
Office of Internal Revenue Agent in Charge
7th Floor, 74 New Montgomery Street
San Francisco 5, Calif.

Internal Revenue Service San Francisco Division.
In reply refer to IRA:EG:90-D:IB

May 3, 1950

Mrs. Lois J. Newman (Formerly
Mrs. Lois J. Senderman)
c/o Samuel Taylor
1211 Balfour Building
351 California Street
San Francisco 4, California

IT:EG-46-First California

Donor: Lois J. Newman (formerly Lois J.
Senderman)

Dear Madam:

You are advised that the determination of your gift tax liability for the calendar year 1946 discloses a deficiency of \$71,195.99, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, 7th Floor, 74 New Montgomery Street, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner

/s/ By R. L. SUTHERLAND,
Internal Revenue Agent in Charge

Enclosures: Statement, Form 1276, Form of Waiver.

DRU

Statement

Gift Tax Year 1946: Liability \$71,195.99; Assessed, \$0.00; Deficiency, \$71,195.99.

In making this determination of your Federal gift tax liability for the year 1946, careful consideration has been given to the protest filed March 13, 1950 and to statements made at a conference held on March 27, 1950.

A copy of this letter and statement has been mailed to your representative, Samuel Taylor, 1211 Balfour Building, San Francisco 4, California.

ADJUSTMENTS TO NET GIFTS

	Returned	Determined
(a) Total gifts	\$ 0.00	\$374,337.44
Less exclusions	0.00	3,000.00
	<hr/>	<hr/>
Amount of gifts included.....	\$ 0.00	\$371,337.44
Specific exemption	0.00	30,000.00
	<hr/>	<hr/>
Net gifts, 1946	\$ 0.00	\$341,337.44

EXPLANATION OF ADJUSTMENTS

	Returned	Determined
(a) Total gifts	\$ 0.00	\$374,337.44

On or about May 2, 1946, there was distributed to Clarissa Shortall, as guardian of the estate of Lois E. Senderman, a minor, the corpus of that certain revocable trust created on January 1, 1943, by donor, then named Lois J. Senderman. It is held that the transfer of the trust corpus to the guardian of the estate of Lois E. Senderman, constitutes a completed gift by the donor in the year 1946. The fair market value on May 2, 1946 of each item comprising the trust corpus is determined as follows:

Cash	\$ 24,577.39
\$ 5,000.00 Nebraska Power Company bonds, 4½s of 1961	5,350.00
\$ 5,000.00 Philadelphia Electric Power bonds, 5½s of 1972	5,325.00
\$10,000.00 Safe Harbor Water Power Corporation bonds, 4½s of 1979.....	10,500.00
\$ 5,000.00 Series E bonds, due 1-1-53.....	3,900.00
\$ 2,000.00 Series E bonds, due 1-1-54.....	1,530.00
\$ 3,000.00 Series E bonds, due 6-1-54.....	2,280.00
\$ 5,000.00 Series E bonds, due 1-1-55.....	3,775.00
\$ 100.00 Series E bonds, due 6-1-55.....	75.00
\$ 5,000.00 Series G bonds, due 6-1-55.....	4,940.00
\$ 5,000.00 U. S. Treasury bonds, 1½s of 1950.....	5,075.00
\$55,000.00 U. S. Treasury bonds, 2½s of 1967-72.....	56,925.00
100 shares General Electric common stock.....	5,050.00
100 shares Chesapeake and Ohio Railway common stock	6,000.00
8% interest as a limited partner of Aztec Brewing Company, a limited partnership.....	175,000.00
Overpayment of income tax and accrued interest for the years 1943-1945	64,035.05
 Total.....	<u>\$374,337.44</u>

COMPUTATION OF GIFT TAX

	Returned	Determined
Net gifts for 1946.....	\$ 0.00	\$341,337.44
Total net gifts for prior years.....	0.00	0.00
Total net gifts.....	<u>\$ 0.00</u>	<u>\$341,337.44</u>
Tax on total net gifts.....	\$ 0.00	\$ 71,195.99
Tax on net gifts for prior years.....	0.00	0.00
Tax on net gifts for 1946.....	<u>\$ 0.00</u>	<u>\$ 71,195.99</u>
Total tax assessed		<u>0.00</u>
Deficiency in gift tax.....		\$ 71,195.99

[Endorsed]: T.C.U.S. Filed July 24, 1950.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition, except denies that petitioner's gift tax return was duly filed.

2 and 3. Admits the allegations contained in paragraphs 2 and 3 of the petition.

4. (1) to (4), inclusive. Denies the allegations of error contained in subparagraphs (1) to (4), inclusive, of paragraph 4 of the petition.

5. (1) Admits the allegations contained in subparagraph (1) of paragraph 5 of the petition.

(2) Admits on January 1, 1943, petitioner established a trust for the benefit of her minor daughter, Lois E. Senderman, and designated Richard S. Goldman as the trustee of such trust; denies the remaining allegations contained in subparagraph (2) of paragraph 5 of the petition.

5. (3) Admits the allegations contained in subparagraph (3) of paragraph 5 of the petition, except as follows: denies that the fair market value of the stock on January 1, 1943, was \$30,000.00;

that the said gift was duly included in petitioner's gift tax return; and that the return was duly filed.

(4) Denies the allegations contained in subparagraph (4) of paragraph 5 of the petition.

(5) Admits that the trustee, Richard S. Goldman, died in 1946, and that during said year the corpus and accumulated income of a certain trust became the absolute property of Lois E. Senderman, the beneficiary thereof; that on May 2, 1946, Clarissa Shortall was duly appointed as the guardian of the estate of said Lois E. Senderman, and that the corpus and accumulated income of that certain trust was thereupon immediately transferred to said guardian; denies the remaining allegations contained in subparagraph (5) of paragraph 5 of the petition.

(6) Denies the allegations contained in subparagraph (6) of paragraph 5 of the petition.

(7) Denies the allegations contained in subparagraph (7) of paragraph 5 of the petition.

(8) Admits the allegations contained in subparagraph (8) of paragraph 5 of the petition, except as follows: for lack of knowledge or information sufficient to form a belief, denies that the income tax returns were duly filed and that any tax shown thereon to be due was duly paid.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's

determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.
T. M. MATHER,
LEONARD ALLEN MARCUSSEN,
Special Attorneys,
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Sept. 19, 1950.

[Title of Tax Court and Cause.]

AMENDED PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency bearing the symbols IRA:EG:90-D:IB and dated May 3, 1950, and as a basis of her proceeding alleges as follows:

1. The petitioner is an individual residing in Sherman Oaks, California. The petitioner duly filed her gift tax return for the calendar year 1946 on or about June 23, 1947 with the Collector of Internal Revenue for the First District of California at San Francisco, California.

2. The notice of deficiency (a copy of which is

attached to the original Petition in this case as Exhibit A and is incorporated by reference herein) was mailed to petitioner by registered mail on May 3, 1950.

3. The taxes in controversy are gift taxes for the calendar year 1946 in the amount of \$71,195.99.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(1) The Commissioner erred in determining that petitioner made a gift or gifts during the calendar year 1946.

(2) In the alternative to the assignment of error set forth in Paragraph 4 (1), above, and assuming that this Court should determine that the Commissioner did not err, as therein alleged, the Commissioner nevertheless erred in determining that the fair market value as of May 2, 1946 of an 8% interest as a limited partner in Aztec Brewing Company, a limited partnership, was \$175,000.00, and further erred in failing to determine that the fair market value of said interest as of said date was any amount in excess of \$88,529.10.

(3) In the alternative to the assignment of error set forth in Paragraph 4 (1), above, and assuming that this Court should determine that the Commissioner did not err as therein alleged, the Commissioner nevertheless erred in including among the gifts purportedly made by petitioner in the calendar year 1946, an item described in his notice of deficiency as "Overpayment of income tax and

accrued interest for the years 1943-1945," the value of which item he determined to be \$64,035.05.

(4) In the alternative to the assignments of error set forth in Paragraphs 4 (1) and 4(3), above, and assuming that this Court should determine that the Commissioner did not err as therein alleged, the Commissioner nevertheless erred in determining that the fair market value as of May 2, 1946 of the item described in his notice of deficiency as "Overpayment of income tax and accrued interest for the years 1943-1945" was \$64,035.05.

5. The facts upon which petitioner relies as a basis for this proceeding are as follows:

(1) Petitioner's name at all times material hereto prior to December, 1944 was Lois J. Senderman. Petitioner's name from December, 1944 to the present has been Lois J. Newman.

(2) On or within a few days after January 1, 1943, petitioner established an irrevocable oral trust for the benefit of her minor daughter, Lois E. Senderman, and designated Richard S. Goldman as the trustee of such trust. Petitioner specifically provided that said trust was irrevocable. Petitioner thereby intended to make and did make an absolute and irrevocable gift, no part of which could or did revert to petitioner. Said gift comprised 800 shares of stock in the Aztec Brewing Company, a California corporation. Petitioner duly included said gift in her gift tax return for the calendar year 1943, which return was duly filed with the Collector of Internal Revenue for the First District of California at San Francisco, California. A suit

brought in the Superior Court of the State of California in and for the City and County of San Francisco (in the Matter of the Estate and Guardianship of Lois E. Senderman, a Minor, Number 103176) adjudicated that said oral trust was irrevocable.

(3) Approximately six or seven months after the establishment of the oral trust referred to in Paragraph 5 (2), above, Richard S. Goldman, the trustee of said trust, executed a written declaration of trust which was intended to embody the terms of said oral trust. Said written declaration construed as a whole is clearly intended and designated by its terms as irrevocable and as effecting an irrevocable and completed gift.

(4) Richard S. Goldman, the trustee of the trust created by petitioner as aforesaid, died on March 1, 1946. On May 2, 1946, Clarissa Shortall was duly appointed as the guardian of the estate of said Lois E. Senderman. The corpus and accumulated income of said trust was thereupon immediately transferred to said guardian pursuant to a court decree.

(5) Petitioner transferred no property by gift or for less than an adequate and full consideration in money or money's worth during 1946. If this Court should determine that petitioner transferred any property by gift or for less than an adequate and full consideration in money or money's worth during 1946, any such transfer was effected by a court decree, and such transfer, under the doctrine of

Harris vs. Commissioner (1950) 340 U.S. 106, was not subject to gift tax.

(6) The fair market value of the corpus and accumulated income of the trust created by petitioner as aforesaid was not in excess of \$228,831.49 as of the date of death of said Richard S. Goldman. The fair market value of the assets transferred to said Clarissa Shortall as guardian, as aforesaid, was not in excess of \$228,831.49 as of the date of her appointment as guardian and as of the date of transfer of said assets to her.

(7) The fair market value of an 8% interest as a limited partner of Aztec Brewing Company, a limited partnership, was not in excess of \$88,529.10 as of the date of death of said Richard S. Goldman, as of the date of appointment of said Clarissa Shortall as guardian of the estate of said Lois E. Senderman and as of the date of delivery of the assets of the trust to said Clarissa Shortall.

(8) During each of the calendar years 1943 through 1946, income tax returns were duly filed on behalf of the trust created by petitioner as aforesaid (known as the Lois E. Senderman Trust) and by Lois E. Senderman, a minor, with the Collector of Internal Revenue for the First District of California at San Francisco, California. The tax, if any, shown thereon to be due was duly paid. By means of letters of the type commonly known as 30-day letters, addressed to said Trust and to said minor, both of which are dated August 25, 1949, the Internal Revenue Agent in Charge, San Francisco Division, has proposed over assessments in

income tax in favor of said Trust and of said minor as follows:

Calendar Year	Taxpayer	Amount of Proposed Overassessment
1943	Lois E. Senderman, a minor	\$ 3,285.48
1944	Lois E. Senderman, a minor	6,776.42
1945	Lois E. Senderman Trust	52,701.57

Said Trust and said minor do not agree with said proposed overassessments and have duly protested them. No part of any of said proposed overassessments nor any interest thereon has been received by said Trust or by said minor. Petitioner did not make a gift of any part of said purported overassessments or overpayments of income tax or of any accrued interest thereon during the calendar year 1946.

(9) The Commissioner by a notice of deficiency dated January 23, 1951 determined deficiencies in income tax against the petitioner for the calendar years 1943 to 1947, inclusive. Said deficiencies were based mainly and said overassessments referred to in the preceding paragraph were based wholly upon including in petitioner's income the income arising in said years out of said gift made by petitioner in 1943. Petitioner had not reported said income in her income tax returns for the said years, and said trust and/or minor had reported said income in its and/or her income tax returns for said years. The petitioner on April 9, 1951 filed a petition with The Tax Court of the United States, Docket No. 33431, alleging that said deficiencies were erroneous. Said petition is now pending before this Court.

Wherefore, petitioner prays that this Court may hear this proceeding and determine that there is no deficiency in gift tax for the calendar year 1946 due from petitioner and that it may grant such further relief as may to it seem proper.

Dated: San Francisco, California, October 12, 1951.

Respectfully submitted,

/s/ SAMUEL TAYLOR,
/s/ WALTER G. SCHWARTZ,
Counsel for Petitioner.

Duly Verified.

[Endorsed]: T.C.U.S. Filed Nov. 2, 1951.

[Title of Tax Court and Cause.]

ANSWER TO AMENDED PETITION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the amended petition, except denies that petitioner's gift tax return was duly filed.

2 and 3. Admits the allegations contained in paragraphs 2 and 3 of the amended petition.

4. (1) to (4), inclusive. Denies the allegations of

error contained in subparagraphs (1) to (4), inclusive, of paragraph 4 of the amended petition.

5. (1) Admits the allegations contained in subparagraph (1) of paragraph 5 of the amended petition.

5. (2) Admits that petitioner filed a gift tax return with the Collector of Internal Revenue for the First District of California covering the calendar year 1943; denies the remaining allegations contained in subparagraph (2) of paragraph 5 of the amended petition.

(3) Admits that a written declaration of trust was executed; denies the remaining allegations contained in subparagraph (3) of paragraph 5 of the amended petition.

(4) Admits that said trustee, Richard S. Goldman, died on March 1, 1946, and that on May 2, 1946, Clarissa Shortall was duly appointed as the guardian of the estate of said Lois E. Senderman. Denies the remaining allegations contained in subparagraph (4) of paragraph 5 of the amended petition.

(5), (6) and (7) Denies the allegations contained in subparagraphs (5), (6) and (7) of paragraph 5 of the amended petition.

(8) Admits the allegations contained in subparagraph (8) of paragraph 5 of the amended petition, except as follows: Denies for lack of knowledge or information sufficient to form a belief that the returns were duly filed or the tax duly paid; denies the allegation that said trust and said minor do not agree with said proposed overassessments; de-

nie the allegation that petitioner did not make a gift of any part of said purported overassessments or overpayments of income tax or of any accrued interest thereon during the calendar year 1946.

(9) Admits the allegations contained in subparagraph (9) of paragraph 5 of the amended petition, except denies that said deficiencies were based mainly and said overassessments referred to in the preceding paragraph were based wholly upon including in petitioner's income the income arising in said years out of said gift made by petitioner in 1943.

6. Denies generally and specifically each and every allegation in the amended petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.
T. M. MATHER,
EDWARD H. BOYLE,
Special Attorneys,
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Nov. 2, 1951.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS*

It is mutually stipulated and agreed by and between the parties hereto by their respective counsel that the following statements may be taken as true by the Court with the reservation that this stipulation shall be without prejudice to the right of either party to object to the introduction of any part thereof on the grounds of immateriality and irrelevancy or the right of either party to introduce further evidence not inconsistent with the facts herein stipulated:

1. The petitioner is an individual residing in Sherman Oaks, California. Petitioner's name at all times material hereto prior to December 1944 was Lois J. Senderman. Petitioner's name from December 1944 to the present has been Lois J. Newman. Petitioner was divorced from Aaron Senderman in 1940. From that time until December 1944 she was not married. In December 1944 she married Louis Newman.

2. Petitioner has a daughter by the name of Lois E. Senderman who was born on May 14, 1935. This daughter is the only child petitioner has ever had.

3. For a number of years prior to January 1, 1943, petitioner owned as her separate property 2396 $\frac{7}{8}$ ths shares of stock of Aztec Brewing Com-

*Two counterparts of this Stipulation but only one set of Exhibits are being filed with the Court.

pany, a California corporation. These shares represented approximately one-fourth of the issued and outstanding stock of this corporation. The Aztec Brewing Company operated a brewery in San Diego, California.

4. On or about January 1, 1943, Richard S. Goldman acquired as trustee 800 shares of stock in said Aztec Brewing Company in trust for petitioner's daughter, Lois E. Senderman.

5. Petitioner filed a Federal gift tax return for the calendar year 1943 on March 15, 1944 with the Collector of Internal Revenue for the First District of California at San Francisco, California. A true and correct copy of said return is attached hereto and incorporated by reference herein as Exhibit 1-A.

6. In 1943, Richard S. Goldman executed as trustee a Declaration of Trust. A true and correct copy of said Declaration is attached hereto and incorporated by reference herein as Exhibit 2-B.

7. The petitioner filed a State of California gift tax return for the calendar year 1943 in which the petitioner reported a transfer of 800 shares of Aztec Brewing Company stock to her daughter. Said return was filed with the Controller of the State of California on or before April 15, 1944.

8. The valuation placed upon the 800 shares in the State of California gift tax return was the same as the valuation placed upon said shares in the Federal gift tax return, to wit: \$30,000.00. The State of California inquired as to the facts on which said valuation was based and determined a

deficiency in petitioner's 1943 State of California gift tax. Said deficiency was paid by petitioner.

9. On or about February 24, 1944, Aztec Brewing Company, a limited partnership, was formed. A true and correct copy of the Certificate of Limited Partnership is attached hereto and incorporated by reference herein as Exhibit 3-C. On or about March 31, 1944 Aztec Brewing Company, a corporation, was dissolved. The assets and liabilities of said corporation were transferred to said partnership. The stockholders in said corporation became partners in the new partnership with partnership interests proportionate to their stockholdings in said corporation. The trust for Lois E. Senderman became a limited partner with an 8% partnership interest.

10. On March 1, 1946, Richard S. Goldman committed suicide. On March 26, 1946, Richard N. Goldman, his son, was appointed the executor of his estate and on that day qualified as such.

11. On April 5, 1946, in a proceeding designated "In the Matter of the Irrevocable Trust of Lois E. Senderman, Beneficiary, and Lois J. Senderman, Donor and Trustor, and Richard S. Goldman, Trustee" a petition was filed by the executor of the estate of Richard S. Goldman with the Superior Court of the State of California in and for the City and County of San Francisco (hereinafter referred to as the Superior Court) for the appointment of a successor trustee or trustees in place of the deceased trustee. A true and correct copy of said petition is attached hereto and incorporated

by reference herein as Exhibit 4-D. [To avoid duplication of the record, the Trust Exhibit A to said Exhibit 4-D is not attached hereto, as it is already incorporated into this Stipulation as Exhibit 2-B.]

12. On April 5, 1946, said Court issued its order appointing Clarissa Shortall as successor trustee in place of the deceased trustee. A true and correct copy of said order is attached hereto and incorporated by reference herein as Exhibit 5-E.

13. On May 2, 1946, a petition was filed in the Superior Court by the executor of the estate of said Richard S. Goldman for the appointment of a guardian of the Estate of said Lois E. Senderman. A true and correct copy of said petition is attached hereto and incorporated by reference herein as Exhibit 6-F.

14. On May 2, 1946, said Court issued its order appointing Clarissa Shortall as guardian of the Estate of said Lois E. Senderman. A true and correct copy of said order appointing guardian is attached hereto and incorporated by reference herein as Exhibit 7-G. A true and correct copy of the letters of guardianship issued to Clarissa Shortall on May 2, 1946 is attached hereto and incorporated by reference herein as Exhibit 8-H.

15. On or about April 22, 1947, a petition was filed with the Superior Court by Clarissa Shortall as the guardian of the estate of Lois E. Senderman for instructions. A true and correct copy of said petition is attached hereto and incorporated by reference herein as Exhibit 9-I. On or about June 23, 1947, an amended petition for instruc-

tions was filed with the Superior Court by said Clarissa Shortall as said guardian. A true and correct copy of said amended petition is attached hereto and incorporated by reference herein as Exhibit 10-J. (The exhibits to said petition and to said amended petition are not attached to said copies for the reason that they are incorporated as exhibits into this stipulation. The declaration of trust, Exhibit A to said petition and to said amended petition is Exhibit 2-B hereto; the petition for appointment of successor trustee or trustees in place of deceased trustee, Exhibit B to said petition and to said amended petition, and the order appointing successor trustee in place of deceased trustee, also Exhibit B to said petition and to said amended petition, are Exhibits 4-D and 5-E hereto; the order appointing guardian, Exhibit C to said petition and to said amended petition is Exhibit 7-G hereto.)

16. On July 10, 1947, a hearing was held before the Honorable T. I. Fitzpatrick, Judge of the Superior Court on said amended petition, and evidence both oral and documentary was offered. Clarissa Shortall as guardian appeared in person and by her attorney, and Lois J. Newman appeared in person and by her attorney. The Court issued its order pursuant to said amended petition. A true and correct copy thereof is attached hereto and incorporated by reference herein as Exhibit 11-K.

17. On or about June 24, 1947, the petitioner filed a Federal gift tax return for the calendar year 1946 with the Collector of Internal Revenue for

the First District of California at San Francisco, California. A true and correct copy of said return is attached hereto and incorporated by reference herein as Exhibit 12-L.

18. For the calendar year 1943 and for all subsequent years, the trust for Lois E. Senderman (up to the time of its termination) and/or the minor reported the entire income (before Revenue Agent's adjustments) from said 800 shares of Aztec Brewing Company and from the partnership which replaced said corporation (as described in paragraph 9 of this stipulation) and from the other investments which were purchased with the income from said 800 shares and with the distributions from said partnership in their respective Federal and State of California income tax returns. Neither said trust nor said minor reported any income for any of the calendar years 1943 to 1946, inclusive, other than the income referred to in the preceding sentence. No part of the aforesaid income was reported by petitioner in her Federal or State of California income tax returns for the calendar year 1943 or for any subsequent year. Said trust and/or said minor filed their Federal income tax returns for each of the calendar years 1943 to 1945, inclusive, on or before their respective due dates with the Collector of Internal Revenue for the First District of California at San Francisco, California and duly paid to said Collector the taxes, if any, shown to be due on each of said returns. For the calendar years 1943, 1944 and 1945, said minor or

said trust reported on their Federal income tax returns and paid the amount of taxes shown below:

Calendar Year	Taxpayer	Tax
1943	Lois E. Senderman, a minor.....	\$ 3,285.48
1944	Lois E. Senderman, a minor.....	6,776.42
1945	Lois E. Senderman Trust.....	52,701.57

19. The petitioner and said minor, during the calendar year 1943 and during all subsequent years, were on a calendar year cash basis for Federal and State of California income tax purposes. The trust for said minor during the calendar year 1943 and during all subsequent years until its termination in 1946 was on a calendar year cash basis for Federal and State of California income tax purposes.

20. By means of letters of the type commonly known as 30-day letters, addressed to said Trust and to said minor, both of which are dated August 25, 1949, the Internal Revenue Agent in Charge, San Francisco Division, has proposed overassessments in income tax in favor of said Trust and of said minor as follows:

Calendar Year	Taxpayer	Amount of Proposed Overassessment
1943	Lois E. Senderman, a minor.....	\$ 3,285.48
1944	Lois E. Senderman, a minor.....	6,776.42
1945	Lois E. Senderman Trust.....	52,701.57

On March 3, 1950, said trust and said minor filed protests with the Bureau of Internal Revenue against said overassessments. No part of any of said proposed overassessments nor any interest thereon has been received by said trust or by said minor nor has any part thereof been scheduled for refund to said trust or said minor.

21. The Commissioner, by means of a notice of deficiency dated January 23, 1951, determined deficiencies in income tax against the petitioner for the calendar years 1943 to 1947, as follows:

Year	Deficiency
1943	\$ 7,575.67
1944	43,486.63
1945	63,164.93
1946	102,072.23
1947	28,084.93

Said deficiencies are based mainly, and said over-assessments referred to in the preceding paragraph are based wholly, upon including in petitioner's income all of the income reported by said trust and by said minor during the calendar years 1943 to 1947, inclusive (except that the deficiency for 1944 is based upon an addition to the petitioner's income of approximately \$78,000.00 of which approximately \$20,000.00 represents income reported by said minor). The amount of the deficiency determined against petitioner for each of said years which is attributable to inclusion in petitioner's income of all of the income reported by said trust and by said minor is in excess of the amount of the overassessment proposed in favor of said trust or said minor for the same calendar year. The petitioner on April 9, 1951 filed a petition with The Tax Court of the United States, Docket No. 33431, alleging that the deficiencies were erroneously asserted and alleging that the inclusion of the income of said trust and said minor in petitioner's income for each of said calendar

years is erroneous. Said proceeding is now pending before this Court. No trial date has as yet been set for said proceeding.

22. The fair market value of the "8% interest as a limited partner of Aztec Brewing Company, a limited partnership" which the respondent includes, on page 2 of the notice of deficiency, Exhibit A to the petition in this case, as a portion of an alleged taxable transfer on May 2, 1946 (although petitioner denies that there was any gift of any sort on said date or at any other time in the calendar year 1946) was \$151,051.09 at all times during the calendar year 1946.

Dated: San Francisco, California, November 2, 1951.

/s/ SAMUEL TAYLOR,

/s/ WALTER G. SCHWARTZ,

Counsel for Petitioner.

/s/ CHARLES OLIPHANT,

Chief Counsel,

Bureau of Internal Revenue.

Counsel for Respondent.

[Endorsed]: T.C.U.S. Filed Nov. 2, 1951.

Form 706
 TREASURY DEPARTMENT
 Internal Revenue Service
 (Revised November 1943)

UNITED STATES
EXAMINED TAX RETURN

CALENDAR YEAR 1944



(Return for use of Collector)

RECEIVED

(To be filed by applicant with the Collector of Internal Revenue for the donor's district on or before the 15th day of March following the close of the calendar year.)

DONOR Lois J. Senderman

(Given name)

(Middle name or initial)

(Surname)

ADDRESS c/o Richard S. Goldman
1111 Mills Tower, San Francisco, Calif.

CITIZENSHIP American

RESIDENCE 975 Bush Street, San Francisco.

Have you (the donor) during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$3,000 in value (or regardless of value if a future interest) as follows? (Answer "Yes" or "No.")

- By the creation of a trust (YES) or the making of additions to a trust previously created (NO), in either case for the benefit of a person or persons other than yourself, and with respect to which you retain no power to revoke the beneficial title to the property in yourself or to change the beneficiaries or their proportionate benefits; or by relinquishing every such power that was retained in a previously created trust (NO).
- By the purchase of a life insurance policy (NO) or the payment of a premium on a previously issued policy (NO), the proceeds of which are in either case payable to a beneficiary other than your estate, and with respect to which you retained no power to revoke the amount or benefits in yourself or your estate or to change the beneficiaries or their proportionate benefits; or by relinquishing every such power that was retained in a previously issued policy (NO).
- By converting title to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety (NO).
- By the exercise or release of a power of appointment, except as provided in subparagraphs 1 and 2 of section 8 of the instructions (NO).
- By converting community property to another, or by converting community property into separate property of your spouse or into a tenancy by the entirety of yourself and spouse (or other similar ownership); to the extent of your interest as prescribed by the rules set forth in section 8 of the instructions (NO).
- By any other method, direct or indirect (NO).

If the answer is "Yes" to any of the foregoing, such a transfer should be fully disclosed under schedule A.

COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR

1. Total included amount of gifts for year (item a, schedule A)	\$ 27,000.00
2. Total deductions for charitable, public, and similar gifts for year (item e, schedule B)	\$
3. Specific exemption claimed (see section 11 of instructions)	30,000.00
Total deductions (item 2 plus item 3)	30,000.00
4. Amount of net gifts for year (item 1 minus item 4)	none

COMPUTATION OF TAX (see section 15 of instructions)

1. Amount of net gifts for year (item 5, above)	none
2. Total amount of net gifts for preceding years (item c, schedule C)	none
3. Total net gifts (item 1 plus item 2)	none
4. Tax computed on item 3	none
5. Tax computed on item 2	none
Tax on net gifts for year (item 4 minus item 5)	none

AFFIDAVIT OF PERSON FILING RETURN

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Federal gift tax law and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedule A was made by me (the donor) during said calendar year.

NOTARIAL SEAL

Sworn to and subscribed before me this 14th day of March, 1944
Louis Nielsen
 (Signature and title of officer administering oath)

Lois J. Senderman
 Signature of donor
c/o Richard S. Goldman
1111 Mills Tower, San Francisco
 (Address of person filing return)

AFFIDAVIT OF PERSON PREPARING RETURN

I swear (or affirm) that I prepared this return for the person named herein and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge.

NOTARIAL SEAL

Sworn to and subscribed before me this 14th day of MARCH, 1944
Louis Nielsen
 (Signature and title of officer administering oath)

Frank H. Sola
 (Signature of person preparing return)
Roll Sola, San Francisco
 (Address of person preparing return)
 Supervision submitted by taxpayer

EX. 1-A

Exhibit No. 1-A—(Continued)

SCHEDULE A—Total Gifts During Year (see sections 5, 6, 7, 8, 9, 10, 12, and 16 of instructions)

Item No. 1. Description of Gift, and Donee's Name and Address;
Date of Gift 1/1/43

Value at Date
of Gift

Donee: Lois E. Senderman (donor's daughter).....\$30,000.00

[Written in longhand]: O.K. G.E.B.

800 shares Aztec Brewing Company, 2201 Main Street, San Diego, California, incorporated under the laws of the State of California.

Said shares stand in the name of Richard S. Goldman, 1111 Mills Tower, San Francisco, California, in trust for donee.

Aztec Brewing Company is not listed on any Exchange, nor has it any market value as no sales of stock have been made since its incorporation.

(a) Total	\$30,000.00
(b) Less Total exclusions not exceeding \$3,000 for each donee (except gifts of future interests).....	3,000.00
(c) Total included amount of gifts for year.....	\$27,000.00

SCHEDULE B—Deductions for Charitable, Public, and Similar Gifts During Year (see sections 10 and 13 of instructions)

None.

SCHEDULE C—Returns, Amounts of Specific Exemption, and Net Gifts for Preceding Years (subsequent to June 6, 1932)

None.

* * * * *

EXHIBIT No. 2-B

The undersigned, Richard S. Goldman, does hereby acknowledge that he has in his possession the following certificates of the capital stock of Aztec Brewing Company, a corporation, to wit: Certificate No. 12 for $2,394\frac{7}{8}$ shares standing in the name of Richard S. Goldman, Trustee for Lois Senderman; Certificate No. 13 for 1 share standing in the name of Philip Storer Thacher; and Certificate No. 18 for 1 share standing in the name of L. J. Senderman, and that he holds all of said certificates of stock as trustee and that the beneficial owners of said stock are Lois J. Senderman owner of $1596\frac{7}{8}$ shares and Lois E. Senderman, a minor, daughter of Lois J. Senderman, owner of 800 shares.

Said Trustee agrees to hold said 800 shares of the capital stock of Aztec Brewing Company, a corporation, and any other property, real or personal, which said Lois E. Senderman may hereafter deposit with him, upon the following terms and conditions:

(1) To collect the income therefrom and to invest and reinvest the corpus and income, or any portion thereof as may, in his judgment, be for the best interest of the beneficiary, to pay any expenses in connection with the management and control of said trust property, including a reasonable sum for his services as Trustee and to distribute to the beneficiary of this trust the whole or such portions of the income of said trust estate as may from time to time, in the sole and uncontrolled discretion of the

Exhibit No. 2-B—(Continued)

Trustee, be for the best interest of the beneficiary. For this purpose the Trustee may, if the income is not sufficient, distribute any portion of the corpus.

(2) Said Trustee agrees to transfer and deliver to any duly appointed Guardian of the estate of Lois E. Senderman, a minor, all of the corpus and accumulated income of the trust estate, and in the event that no such Guardian is appointed the Trustee will deliver to Lois E. Senderman upon her reaching the age of 21 years all of the property of said trustee estate then remaining in his hands. If said Lois E. Senderman shall die prior to her reaching the age of 21 years said Trustee undertakes and agrees to deliver to the personal representative of said Lois E. Senderman any portion of the corpus or accumulated income of said trust estate.

(3) The Trustee may resign and discharge himself of the trust created hereunder by causing the property which he holds as Trustee to be transferred into the name of the duly appointed Guardian of said Lois E. Senderman, a minor. In the event of the death of the Trustee while this trust shall remain in force and effect his executors, administrators or heirs at law as the case may be, are hereby directed and empowered to immediately apply to a court of competent jurisdiction to deliver to the duly appointed guardian of Lois E. Senderman, a minor, that portion of the trust property as to which Lois E. Senderman is the beneficial owner. If no such Guardian has been appointed the executors, ad-

Exhibit No. 2-B—(Continued)

ministrators or heirs at law of said deceased Trustee shall apply to a Court of competent jurisdiction for the appointment of a Guardian to whom such property can be conveyed.

(4) Trustee will render annually on a calendar year basis a full and competent statement of all moneys and property received and disbursed during the calendar year and shall file such reports and execute such documents as may be necessary in connection with the handling of said trust estate.

(5) Trustee shall have no obligation whatsoever with respect to any of the property held hereunder, except as is expressly provided for herein, and trustee shall not be responsible for any losses incurred or errors in judgment unless the same are the result of wilful negligence. Upon the termination of his liability as Trustee, Trustee shall before distributing the property herein referred to reimburse himself for any and all expenses and charges of any kind or character incurred by him in connection with the administration of this trust which have not been previously paid, and shall withhold such portion of the property as may be necessary for the payment of any contingent obligation or obligations, the exact amount of which have not been determined. Upon the complete payment of all obligations any balance remaining in the hands of the Trustee shall be paid and delivered to said Lois E. Senderman, a minor, or if she has arrived at the age of majority then to said Lois E. Senderman.

Exhibit No. 2-B—(Continued)

In witness whereof, I have hereunto set my hand this first day of January, 1943.

RICHARD S. GOLDMAN.

I, Lois J. Senderman, individually and as the mother and guardian of Lois E. Senderman, a minor, do hereby acknowledge receipt of the instrument of which the foregoing is a carbon copy and do hereby accept the same and agree to be bound thereby.

Dated: January 1, 1943.

LOIS J. SENDERMAN,
Mother and Guardian of Lois E. Senderman, a
minor.

I, Richard S. Goldman, do hereby certify that I am the person named in the attached document as Trustee. That I have in my possession a duplicate original of the within instrument. That I have compared the attached copy with the said original and that the same is full, true and correct in all respects.

Dated: April 25th, 1944.

/s/ RICHARD S. GOLDMAN.

EXHIBIT No. 3-C

CERTIFICATE OF LIMITED PARTNERSHIP

Know all men by these presents:

That we, the undersigned, have this day agreed to and hereby do form a limited partnership under the laws of California.

And we hereby certify:

I. Name

That the name of said limited partnership is: Aztec Brewing Company.

II. Purpose

That the purposes for which this limited partnership is formed are:

To carry on the business of brewers, distillers and manufacturers of, and merchants and dealers in beer and near-beer, and of casks, bottles, and other receptacles for the same, and of malt, hops, grain, meal, yeast, and all other materials and things capable of being used in connection with any such business or manufacture, to own any and all real estate necessary for the proper conduct of the business of the partnership; to borrow money with the consent or approval of the general partners; and to do any and all things necessary or advisable to carry out the above purposes.

III. Principal Office

The principal office for the transaction of the business of said partnership is to be located at 2301 Main Street in the City of San Diego, Zone 12, State of California.

Exhibit No. 3-C—(Continued)

IV. Partners

The name and place of residence of each member of the partnership, together with a designation showing whether each member is a general or limited partner, is as follows:

Name	Address	Whether General or Limited Partner
E. P. Baker	4411 Conde Pl., San Diego, Calif.	General
James N. Crofton	Keene, California	General
Loretta Crofton	Keene, California	Limited
Vera F. Crofton	1115 Holly Ave., Arcadia, Calif.	Limited
R. S. Goldman as Trustee for Lois J. Senderman	1111 Mills Tower San Francisco, Calif.	Limited
E. H. Crofton	Chula Vista, Calif.	Limited
Alva Crofton	Chula Vista, Calif.	Limited
H. D. Cates	Chula Vista, Calif.	Limited
Tina Cates	Chula Vista, Calif.	Limited
Mrs. E. P. Baker	4411 Conde Pl., San Diego, Calif.	Limited
R. S. Goldman as Trustee for Lois E. Senderman	1111 Mills Tower San Francisco, Calif.	Limited

V. Term of Partnership

Unless terminated sooner under the provisions hereof, the term for which the partnership is to exist is the period from the actual date the partnership begins business until the close of business on January 31, 1945, and thereafter from year to year, but at any time any of the general or limited partners owning 50% or more of the partnership interests may deliver to the then principal office of the partnership a written notice that they desire the partnership to terminate at the close of business one month thereafter in which event the partnership shall terminate at the time so designated.

Exhibit No. 3-C—(Continued)

VI. Capital Contributions of Partners

The capital contributions of the general and limited partners shall be cash and/or other property, as hereinafter set forth. Said capital contributions of said general and limited partners and the share of each in the profits and losses of the partnership shall be as follows:

Name	Capital Contribution	Share in Profits	Share in Losses
E. P. Baker, general partner	\$ 93,750.00	12½%	12½%
James N. Crofton, gen. partner	225,000.00	30%	30%
Mrs. E. P. Baker, limited partner	93,750.00	12½%	12½%
Vera F. Crofton, limited partner	75,000.00	10%	10%
Loretta Crofton, limited partner	25,000.00	3-1/3%	3-1/3%
Richard S. Goldman, Trustee for Lois J. Senderman, limited partner	127,500.00	17%	17%
Richard S. Goldman, Trustee for Lois E. Senderman, limited partner	60,000.00	8%	8%
E. H. Crofton, limited partner	13,750.00	1-5/6%	1-5/6%
Alva Crofton, limited partner	11,250.00	1½%	1½%
H. D. Cates, limited partner	13,750.00	1-5/6%	1-5/6%
Tina Cates, limited partner	11,250.00	1½%	1½%
Total	\$750,000.00	100%	100%

The general and limited partners listed above own all of Aztec Brewing Company, a California corporation, hereinafter referred to as "Corporation," in the same proportion as they own interests in the within partnership. Said corporation is in process of dissolution and liquidation and said partners as said stockholders, are now or will presently be, entitled to receive as a first liquidating dividend

Exhibit No. 3-C—(Continued)

from said corporation, the following described property:

1. All real estate owned by said corporation on the date of said first liquidating dividend;

2. All furniture and fixtures owned by said corporation on the date of said first liquidating dividend;

3. All brewing, bottling delivery and other equipment owned by said corporation on the date of said first liquidating dividend;

4. All bottles, cans, barrels, cases, cartons, packages, containers, labels, crowns, stamps, office supplies and advertising matter owned by said corporation on the date of said first liquidating dividend;

5. All unexpired insurance policies owned by said corporation on the date of said first liquidating dividend;

6. The entire finished stock of beer and/or other beverages owned by said corporation on the date of said first liquidating dividend;

7. All beer and other beverages in storage and/or process of manufacture and owned by said corporation on the date of said first liquidating dividend;

8. All trade marks owned by said corporation on the date of said first liquidating dividend;

9. All or such portion of the malt, hops, rice, sugar, and other raw materials usable in and for the manufacture of beer and/or other beverages and owned by said corporation on said date of said first liquidating dividend, the book value of which, on the books of account of said corporation, when

Exhibit No. 3-C—(Continued)

added to the book values of the items 1 to 8, inclusive, make a total book value of \$750,000.00 for items 1 to 9, inclusive;

10. Should said aggregate book values of items 1 to 9, inclusive, be less than \$750,000.00, than an amount of cash which, when added to the aggregate book value of items 1 to 9, inclusive, makes a total book value of \$750,000.00.

Said general and limited partners, and each of them, hereby agree to and do contribute, convey and transfer to this partnership their respective interests in and to said property to be so received as aforesaid as their respective capital contributions to this partnership. Said partners, and each of them, hereby agree to execute any and all documents, and do any and all things, necessary to contribute, convey and transfer to this partnership all of said property.

VII. Books of Account

True, just and correct books of account shall be kept by the general partners in which there shall be entered all the transactions of or relating to the partnership or its business.

The books of account shall be kept at the principal place of business of the partnership and shall be open to inspection at all reasonable times by any and all general or limited partners.

Any general partner shall have the right to request an audit of the books by a certified public accountant to be selected by the general partners, the cost of which audit shall be paid by the partner-

Exhibit No. 3-C—(Continued)

ship and charged as an expense upon its books of account.

The books of account of the partnership shall be kept on the basis of a fiscal year beginning on the first day of February, 1944, and ending on the last day of January, 1945.

VIII. General Manager

Mr. E. P. Baker, one of the general partners herein named, shall be the general manager of the business of the partnership. He shall not borrow any money, sell any substantial portion of the plant and operating assets of the partnership, nor purchase any other business or plant, without the consent of all general partners. Mr. Baker shall be paid a salary of \$25,000.00 per year and he shall be given an expense allowance of \$3,600.00 per year, all of which salary and expense allowance shall be treated as an expense of the business in the ascertainment of profits for distribution among the partners.

Mr. Baker shall remain as general manager until or unless he dies, resigns, becomes physically unable to perform the duties of general manager or is removed as general manager by a written notification executed by general and/or limited partners owning at least 60% interest in the partnership. Upon the death, resignation, incapacity or removal of Mr. Baker, the assistant general manager, to be selected as hereafter provided, shall be and become acting general manager for a period of sixty

Exhibit No. 3-C—(Continued)

(60) days thereafter. During said sixty (60) day period a new general manager shall be appointed by an instrument in writing signed by general or limited partners owning at least 60% of the partnership. Should no new general manager be appointed during such 60 day period, the assistant general manager shall continue to function as acting general manager until a new general manager is so appointed. Immediately after the business of the partnership is commenced, Mr. Baker shall appoint F. M. Brick as assistant general manager. Such assistant general manager may be removed and a new assistant manager appointed, at any time by the general partners.

IX. Termination By Death or Disability of
General Partners.

Notwithstanding the provisions of Paragraph V hereof, this partnership shall terminate upon the death of either of the general partners.

X. Liquidation of Partnership

The dissolution of the partnership shall be carried to completion by the general partners or if one has died, by the surviving general partner and a trustee to be selected in the following manner, to wit: Should E. P. Baker die, then and in such event, R. S. Goldman as trustee for Lois J. Senderman, Mrs. E. P. Baker and R. S. Goldman as trustee for Lois E. Senderman, together with the legal representative of Mr. Baker's estate, shall designate a trustee to act with Mr. Crofton in

Exhibit No. 3-C—(Continued)

the dissolution of the partnership. Should James N. Crofton die, then and in such event, Loretta Crofton, Vera F. Crofton, E. H. Crofton, Alva Crofton, H. D. Cates, Tina Cates and the legal representative of Mr. Crofton's estate shall designate the trustee to act with Mr. Baker in the dissolution of the partnership.

XI. Assignment of Interest of Limited Partner

The limited partners may not assign their respective interests in the partnership except as follows: R. S. Goldman as trustee for Lois J. Senderman, Mrs. E. P. Baker, and R. S. Goldman as trustee for Lois E. Senderman shall not assign their respective interests in the partnership to anyone other than E. P. Baker and/or the remaining limited partners above named which for convenience are herein designated as the "Baker-Jaffe group" without first giving said E. P. Baker and/or the remaining limited partners in said group the option to purchase such interest at the fair market value thereof, exclusive of good will. Loretta Crofton, Vera F. Crofton, E. H. Crofton, Alva Crofton, H. D. Cates and Tina Cates shall not assign their respective interests in the partnership to anyone other than James N. Crofton and/or the remaining limited partners above named which for convenience are herein designated as the "Crofton group" without first giving to said James N. Crofton and/or the remaining limited partners in said Crofton group the option to purchase such interest

Exhibit No. 3-C—(Continued)

at the fair market value thereof, exclusive of good will. Should the parties be unable to agree upon such fair market value, then and in such event, the same shall be determined by a board of arbitrators, one to be selected by the seller, one by the purchasers, and the third by these two. Should the purchasers be unwilling to proceed with the purchase of the interest of the limited partner at the purchase price fixed by such board of arbitration, then and in such event, such interest shall be offered to the members of the opposite group and should such members be unwilling to purchase at said price, then said interest may be sold to outsiders.

XII. Death of Limited Partner

In the event of the death of any limited partner, his estate may continue as a limited partner but in the event that his estate, or his heirs and legatees do not desire to continue in the partnership, the surviving partners of the decedent's group shall have the right to buy the deceased partner's interest, and if such surviving partners of the decedent's group do not wish to make such purchase, the partners of the other group shall have the right to buy the deceased partner's interest, at its market value at the date of death. In computing such market value the good will, if any, of the partnership shall be considered or treated as having no value. Should the parties be unable to agree upon such value, the same shall be fixed by a board

Exhibit No. 3-C—(Continued)

of arbitrators, one to be selected by the deceased limited partner's legal representative, one by the purchasing partners, and the third by these two. Should said surviving partners elect to purchase the interest of the deceased partner as aforesaid, said purchase price shall be payable fifty per cent (50%) on the finding of value by the arbitrators and the balance is not to exceed three (3) yearly installments together with interest at four per cent (4%) per annum from said date of death. If no partner wishes to so purchase the deceased limited partner's interest, his or her estate may sell it to any outsider.

XIII. Bonds of General Partners

Each general partner shall furnish the partnership with a fidelity bond in the amount of \$100,000.00, the cost of which bonds shall be paid by the partnership.

XIV. Distribution of Profits

The profits or gains of the partnership shall be distributed at least quarterly to the partners, but in arriving at such net profits, there shall be maintained the usual reserves as are called for by proper accounting methods and no distribution shall be made which will leave a cash balance on hand of less than \$150,000.00.

XV. Cooperation Between General Partners

Notwithstanding the fact that Mr. E. P. Baker

Exhibit No. 3-C—(Continued)

is the general manager, he shall consult and counsel with the other general partner at all times and such general partner shall have the right to obtain any desired information directly from any and all heads of the departments of the partnership.

XVI. Checks

All checks drawn on the partnership bank account or accounts shall be signed by the general partners and/or their nominees.

In Witness Whereof, we have hereunto set our hands this 24th day of February, 1944.

/s/ E. P. BAKER

/s/ JAMES N. CROFTON

/s/ LORETTA CROFTON

/s/ VERA F. CROFTON

/s/ R. S. GOLDMAN

as Trustee for Lois J. Senderman

/s/ E. H. CROFTON

/s/ ALVA CROFTON

/s/ H. D. CATES

/s/ TINA CATES

/s/ MRS. E. P. BAKER

/s/ R. S. GOLDMAN

as Trustee for Lois E. Senderman.

State of California,
County of San Diego—ss.

James N. Crofton, Vera F. Crofton, Loretta Crofton and H. D. Cates, each for himself or her-

Exhibit No. 3-C—(Continued)

self being first duly sworn upon oath, deposes and says:

That he or she has read the above and foregoing Certificate of Limited Partnership and that he or she knows the contents thereof and that he or she knows the same to be true of his or her own knowledge; that he or she executed the same of his or her own free will and accord and upon the consideration stated therein.

/s/ JAMES N. CROFTON

/s/ VERA F. CROFTON

/s/ LORETTA CROFTON

/s/ H. D. CATES

Subscribed and sworn to before me this 24th day of February, 1944.

/s/ JOSEPHINE IRVING

Notary Public in and for the County of San Diego,
State of California.

State of California,
County of San Diego—ss.

E. P. Baker and Mrs. E. P. Baker, each for himself or herself being first duly sworn upon oath, deposes and says:

That he or she has read the above and foregoing Certificate of Limited Partnership and that he or she knows the contents thereof and that he or she knows the same to be true of his or her own knowl-

Exhibit No. 3-C—(Continued)

edge; that he or she executed the same of his or her own free will and accord and upon the consideration stated therein.

/s/ E. P. BAKER

/s/ MRS. E. P. BAKER

Subscribed and sworn to before me this 24th day of February, 1944.

/s/ F. M. BRICK

Notary Public in and for the County of San Diego, State of California. My commission expires April 14, 1945.

State of California,
City and County of San Francisco—ss.

R. S. Goldman, as Trustee for Lois J. Senderman, and as Trustee for Lois E. Senderman, being first duly sworn upon oath, deposes and says:

That he has read the above and foregoing Certificate of Limited Partnership and that he knows the contents thereof and that he knows the same to be true of his own knowledge; that he executed the same of his own free will and accord and upon the consideration stated therein.

/s/ R. S. GOLDMAN,

As Trustee for Lois J. Senderman

/s/ R. S. GOLDMAN,

As Trustee for Lois E. Senderman

Exhibit No. 3-C—(Continued)

Subscribed and sworn to before me this 26th day of February, 1944.

/s/ LOUIS WIENER,
Notary Public in and for said County and State.

State of California,
County of San Diego—ss.

E. H. Crofton, Alva Crofton and Tina Cates, each for himself or herself being first duly sworn upon oath, deposes and says:

That he or she has read the above and foregoing Certificate of Limited Partnership and that he or she knows the contents thereof and that he or she knows the same to be true of his or her own knowledge; that he or she executed the same of his or her own free will and accord and upon the consideration stated therein.

/s/ E. H. CROFTON

/s/ ALVA CROFTON

/s/ TINA CATES

Subscribed and sworn to before me this 29th day of February, 1944.

/s/ FRANK A. FRYE, JR.
Notary Public in and for the County of San Diego,
State of California.

EXHIBIT No. 4-D

In the Superior Court of the State of California
In and for the City and County
of San Francisco

No. 351814

In the Matter of the Irrevocable Trust of Lois E. Senderman, Beneficiary, and Lois J. Senderman, Donor and Trustor, and Richard S. Goldman, Trustee.

PETITION FOR APPOINTMENT OF SUCCESSOR TRUSTEE OR TRUSTEES IN PLACE OF DECEASED TRUSTEE.

To the Honorable, the Superior Court of the State of California in and for the City and County of San Francisco:

The petition of Richard N. Goldman respectfully shows:

I.

That on the 1st day of January, 1943 Lois J. Senderman, as trustor and donor, and Richard S. Goldman, as trustee, executed a trust indenture wherein and whereby according to the terms of said trust indenture certain properties were irrevocably donated and placed in trust for the use and benefit of Lois E. Senderman, a minor; that a true and correct copy of said trust indenture is attached hereto and marked Exhibit "A":

That Lois E. Senderman, the said beneficiary, is now approximately of the age of eleven (11) years.

Exhibit No. 4-D—(Continued)

II.

That said Richard S. Goldman, the trustee named in said trust indenture, died on the 1st day of March, 1946.

III.

That the said trust indenture does not provide a practical method of appointing a trustee to fill the vacancy created by the death of Richard S. Goldman.

That a judicial designation and appointment of a successor trustee or trustees is necessary in order to facilitate the administration of said trust by such trustee or trustees.

That the trust estate of said beneficiary may suffer loss if an immediate appointment is not made.

That in a proceeding entitled "In the Superior Court of the State of California in and for the City and County of San Francisco, In the Matter of the Estate of Richard S. Goldman, deceased" and numbered therein 102461, Richard N. Goldman, your petitioner was on March 26, 1946 appointed the executor of the last will and testament of Richard S. Goldman, deceased, and thereafter, and on said day, qualified as such and has ever since been and now is the duly qualified and acting executor.

That other than your petitioner and the Estate of Richard S. Goldman, deceased, and said minor there are no persons interested in said trust.

Exhibit No. 4-D—(Continued)

IV.

That your petitioner respectfully suggests that Clarissa Shortall be appointed as trustee or trustees and that the same have consented to act as such.

Wherefore, your petitioner prays that this court appoint the person or persons suggested and designated in the foregoing paragraph IV thereof as trustee or trustees of said trust to fill the vacancy created by the death of Richard S. Goldman, and for such further order or orders as may be meet and proper in the premises.

/s/ CLARISSA SHORTALL,
Attorney for Petitioner.

State of California,
City and County of San Francisco—ss.

Richard N. Goldman, being first duly sworn, deposes and says:

That he is the petitioner named in the foregoing petition; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief and that as to those matters he believes it to be true.

RICHARD N. GOLDMAN

Exhibit No. 4-D—(Continued)

Subscribed and sworn to before me this 5th day of April, 1946.

[Seal] LOUIS WIENER
Notary Public in and for the City and County of
San Francisco, State of California.

The undersigned hereby requests that the prayer of the above petition be granted without further notice.

 LOIS J. NEWMAN
Mother and natural guardian of the said Lois E.
Senderman, the minor beneficiary.

Subscribed and sworn to before me this 5th day of April, 1946.

[Seal] LOUIS WIENER
Notary Public in and for the City and County
of San Francisco, State of California.

The undersigned hereby consents to act as such successor trustee.

 CLARISSA SHORTALL

[Endorsed]: Filed April 5, 1946. H. A. van der Zee, Clerk.

EXHIBIT No. 5-E

[Title of Superior Court and Cause No. 351814.]

ORDER APPOINTING SUCCESSOR TRUS-
TEE IN PLACE OF DECEASED
TRUSTEE

On the application and upon reading and filing the petition of Richard N. Goldman, and it further appearing to the court above-entitled that all of the allegations of said petition are true, and that all parties interested in the above designated trust have each in writing consented thereto and that the giving of further notice hereof is unnecessary and useless, and that it is necessary for the immediate and proper administration of said trust:

Now, Therefore, it is Ordered, Adjudged and Decreed that Clarissa Shortall be and she is hereby appointed as the successor trustee to fill the vacancy in said trusteeship caused by the death of Richard S. Goldman, and in place of said Richard S. Goldman, deceased.

Dated: April 5, 1946.

EDWARD P. MURPHY,
Judge of the Superior Court.

EXHIBIT No. 6-F

In the Superior Court of the State of California
in and for the City and County
of San Francisco

No. 103176

In the Matter of the Estate and Guardianship of
LOIS E. SENDERMAN, a minor.

•PETITION FOR APPOINTMENT OF
GUARDIAN OF MINOR

To the Honorable, the Superior Court of the
State of California in and for the City and County
of San Francisco:

The petition of Richard N. Goldman as executor
of the estate of Richard S. Goldman, deceased, re-
spectfully represents:

That your petitioner is a resident of the City
and County of San Francisco, State of California;
that on the 26th day of March, 1946 in that certain
proceeding in the Superior Court of the State of
California in and for the City and County of San
Francisco, entitled In the Matter of the Estate of
Richard S. Goldman, deceased, No. 102461 thereof,
the last will and testament of Richard S. Goldman,
deceased, was duly and regularly admitted to pro-
bate in which said last will and testament your
petitioner was named executor and thereupon quali-
fied as said executor and on said date was duly and
regularly appointed and ever since has been and

Exhibit No. 6-F—(Continued)

now is the executor of the last will and testament of Richard S. Goldman, deceased.

That Lois E. Senderman is a minor of the age of eleven years residing in the City and County of San Francisco, State of California.

That the names and addresses of the parents of said minor child are as follows:

Father: Aaron Senderman—1908A Baker Street, San Francisco, California.

Mother: Lois J. Newman—Mayflower Hotel, San Francisco, California.

That the said minor has no guardian legally appointed by will or otherwise and has estate which needs the care and attention of some fit and proper person; that the property of said estate consists of personal property, the exact nature and description of which is unknown at this time.

That on the 1st day of January, 1943 Richard S. Goldman as trustee executed a trust indenture which said trust was in full force and effect at the time of the death of said Richard S. Goldman, and wherein and whereby according to the terms of said trust indenture certain properties were declared and placed in trust for the use and benefit of Lois E. Sanderman, the above-named minor. Paragraph III of said trust indenture reads as follows:

“In the event of the death of the Trustee while this trust shall remain in force and effect, his executors, administrators or heirs at law as the case may be, are hereby directed and empowered

Exhibit No. 6-F—(Continued)

to immediately apply to a court of competent jurisdiction to deliver to the duly appointed guardian of Lois E. Senderman, a minor, that portion of the trust property as to which Lois E. Senderman is the beneficial owner. If no such guardian has been appointed the executors, administrators or heirs at law of said deceased Trustee shall apply to a court of competent jurisdiction for the appointment of a guardian to whom such property can be conveyed.”

That in accordance therewith your petitioner believes that Clarissa Shortall, a resident of the City and County of San Francisco, State of California is a fit and proper person to act as such guardian and therefore your petitioner respectfully requests that said Clarissa Shortall be appointed as such guardian of the estate of Lois E. Senderman, a minor.

Wherefore, your petitioner prays that the said Clarissa Shortall be appointed guardian of the estate of Lois E. Senderman, a minor, and for such other and further order as may be meet and proper in the premises.

RICHARD N. GOLDMAN

Executor of the Estate of Richard S. Goldman,
Deceased.

A. B. BIANCHI,

Attorney for Petitioner.

Exhibit No. 6-F—(Continued)

State of California,
City and County of San Francisco—ss.

Richard N. Goldman, being duly sworn, deposes and says: That he is the petitioner named in the foregoing Petition for Appointment of Guardian of Minor; that he has read the same and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief and as to those matters he believes it to be true.

RICHARD N. GOLDMAN

Subscribed and sworn to before me this 29th day of April, 1946.

[Seal]

LOUIS WIENER

Notary Public in and for the City and County of
San Francisco, State of California.

The undersigned, Aaron Senderman, hereby certifies that he has read the foregoing Petition for the appointment of Clarissa Shortall as guardian of the estate of Lois E. Senderman, a minor; that he is the father of the said minor and that he hereby waives any further notice of the hearing of said Petition.

Dated at San Francisco this 29th day of April, 1946.

AARON SENDERMAN

The undersigned, Lois J. Newman, formerly Lois

Exhibit No. 6-F—(Continued)

J. Senderman, hereby certifies that she has read the foregoing Petition for the appointment of Clarissa Shortall as guardian of the estate of Lois E. Senderman, a minor; that she is the mother of said minor and now has and for sometime has had the sole care and custody of the person of said minor; that she hereby waives any further notice of the hearing of said petition and consents to the granting thereof.

Dated at San Francisco this 29th day of April, 1946.

LOIS J. NEWMAN

Upon reading and filing the foregoing Petition and good cause appearing therefor,

It is hereby ordered that further notice of the hearing thereof be dispensed with.

Dated at San Francisco this 2nd day of May, 1946.

T. I. FITZPATRICK,

Judge of the Superior Court.

[Endorsed]: Filed May 2, 1946.

EXHIBIT No. 7-G

[Title of Superior Court and Cause No. 103176.]

ORDER APPOINTING GUARDIAN

The petition of Richard N. Goldman for the appointment of Clarissa Shortall as guardian of the estate of Lois E. Senderman, a minor, coming on regularly this day for hearing, and upon satis-

Exhibit No. 7-G—(Continued)

factory proof appearing, the Court accordingly finds:

I. That notice of this hearing has been duly and regularly given according to law to Aaron Senderman, whom the Court finds to be the father of said minor, and to Lois J. Newman, whom the Court finds to be the mother of said minor and the person charged with the sole support, care, custody and control of said minor; further notice of said hearing having heretofore been dispensed with by the order of this Court;

II. That the allegations of said petition are true and that Lois E. Senderman is a minor of the age of approximately eleven (11) years and resided in the City and County of San Francisco, State of California;

III. That said minor has no guardian legally appointed by will or otherwise and has an estate which requires the care and attention of some fit and proper person, and that Clarissa Shortall is a fit and proper person to act as such guardian;

IV. That the petitioner, Richard N. Goldman, is the executor of the last will and testament of Richard S. Goldman, deceased; that in a proceeding in the above designated court entitled "In the Matter of the Estate of Richard S. Goldman, Deceased" and numbered therein 102461 he was, on March 26, 1946, duly and regularly appointed and qualified as the executor of the last will and testament of said Richard S. Goldman, deceased, and

Exhibit No. 7-G—(Continued)

is now and ever since has been such duly and regularly qualified and acting executor;

V. That Richard S. Goldman in his lifetime became, was and continued to be up to the time of his death on March 1, 1946, the trustee of a trust created for the benefit of said minor wherein and whereby from approximately the 1st day of January, 1943, he held as such trustee eight hundred (800) shares of the Aztec Brewing Company, a corporation, which same then constituted the bulk of said trust estate of said minor beneficiary; that the said Richard S. Goldman as such trustee for said minor, under date of February 24, 1944, in connection with the dissolution and reorganization of Aztec Brewing Company, a corporation, into a limited partnership doing business under the firm name and style of Aztec Brewing Company which reorganization required the surrender and cancellation of said eight hundred (800) shares in exchange for an interest in the said limited partnership did become a limited partner of said Aztec Brewing Company as such trustee for said minor; and as such trustee for said minor did secure and continue to hold in trust for said minor until the time of his death an eight per cent interest in and to the properties and profits of Aztec Brewing Company, a limited partnership; that the capital contribution credited to the minor's interest in the Articles of Limited Partnership by reason of said exchange was and is Sixty Thousand Dollars (\$60,000.00);

Exhibit No. 7-G—(Continued)

VI. That primarily by reason of the foregoing transaction the said trust estate accumulated and grew in value; that at the time of the death of said trustee and now the personal property belonging to the estate of said minor in addition to the said limited partnership interest consists of approximately upwards of One Hundred Fifty Thousand Dollars (\$150,000.00) worth of securities and cash; that all of said trust property is on deposit with The Canadian Bank of Commerce (California) save and except the sum of approximately Twenty-five Thousand Dollars (\$25,000.00) in cash which is held by Clarissa Shortall as successor trustee of said Richard S. Goldman, deceased; that following the death of said Richard S. Goldman and on April 5, 1946, said Clarissa Shortall was by order of this Court appointed successor trustee in place of said deceased trustee in a proceeding in the Court above designated and entitled "In the Matter of the Irrevocable Trust of Lois E. Senderman, Beneficiary, and Lois J. Senderman, Donor and Trustor, and Richard S. Goldman, Trustee", and numbered therein 351814;

That under date of April 21, 1946 and in order to protect the said investment, Clarissa Shortall, as successor trustee, duly executed and signed new and Amended Articles of Limited Partnership wherein and whereby she became substituted in lieu and stead of said Richard S. Goldman, Trustee for Lois E. Senderman, a minor, a limited partner;

Exhibit No. 7-G—(Continued)

VII. That in and by Paragraph (3) of said trust indenture it is provided as follows:

“(3) The trustee may resign and discharge himself of the trust created hereunder by causing the property which he holds as Trustee to be transferred into the name of the duly appointed Guardian of said Lois E. Senderman, a minor. In the event of the death of the Trustee while this trust shall remain in force and effect his executors, administrators or heirs at law as the case may be, are hereby directed and empowered to immediately apply to a court of competent jurisdiction to deliver to the duly appointed guardian of Lois E. Senderman, a minor, that portion of the trust property as to which Lois E. Senderman is the beneficial owner. If no such Guardian has been appointed the executors, administrators or heirs at law of said deceased Trustee shall apply to a Court of competent jurisdiction for the appointment of a Guardian to whom such property can be conveyed.”

VIII. That believing that the interests of said minor and her estate and the maintenance of the integrity of the trust investment are best served by a guardian of said minor being substituted in said Articles of Limited Partnership for and instead of the successor trustee, said successor trustee, Clarissa Shortall, has expressed her desire to resign and discharge herself of the aforesaid trust by causing the property which she holds as trustee to be transferred into her name as the duly ap-

Exhibit No. 7-G—(Continued)

pointed guardian of said Lois E. Senderman, a minor;

That said Clarissa Shortall has expressed in open court her consent to the insertion by the Court in the order of appointment of conditions not otherwise obligatory which do or may impose upon her special duties in connection with the care and custody of said minor's estate;

IX. That it is for the best interest of said minor and her said estate that the guardian continue to remain and/or to become as such a limited partner of Aztec Brewing Company to the same extent as to partnership interest as now prevails.

X. That it is not necessary that said guardian have on hand at any time more than Twenty-five Thousand Dollars (\$25,000.00) belonging to said minor's estate; that The Canadian Bank of Commerce (California) has consented to accept for deposit and safe keeping such portion or all of the personal assets of said minor's estate as this Court may deem proper and agreed that all property so deposited with it shall thereupon be held by it under the order and direction of this Court;

That said Canadian Bank of Commerce (California) is a Bank duly qualified to so accept such deposits or deposit under the "Bank Act" of the State of California, Sections 51, 51.1 and 93 thereof;

That as of the date hereof all of the property of this estate is on deposit as required by Sec. 51,

Exhibit No. 7-G—(Continued)

Sec. 51.1 and Sec. 93 of said Bank Act with said Bank, save and except Twenty-five Thousand Dollars (\$25,000.00) in cash which is in the custody and possession of Clarissa Shortall, the said successor trustee.

Now, Therefore, it is Hereby Ordered, Adjudged and Decreed as follows:

(a) That the said Clarissa Shortall be and she is hereby appointed guardian of the estate of the said minor, Lois E. Senderman, and that letters of guardianship of the estate of said minor issue to said Clarissa Shortall upon her taking the oath required by law and filing a bond according to law in the sum of Twenty-five Thousand Dollars (\$25,000.00) given by a surety company authorized by law to furnish such bond, otherwise said bond to be in the sum of Fifty Thousand Dollars (\$50,000.00);

(b) That with the exception of the sum of Twenty-five Thousand Dollars (\$25,000.00) all monies and personal assets of the minor ward shall remain on deposit and be deposited forthwith with The Canadian Bank of Commerce (California) in accordance with the provisions of Sections 51, 51.1 and 93 of the "Bank Act" of the State of California, the same to be and remain subject to, and to be withdrawn only upon, the further order of this Court;

(c) That the resignation of Clarissa Shortall as successor trustee as aforesaid be and the same is hereby approved;

Exhibit No. 7-G—(Continued)

(d) That subject to the further order of this Court the said guardian having consented thereto she is hereby directed as a condition of her appointment to remain or become as such guardian a limited partner in said Aztec Brewing Company, a limited partnership and hereby empowered to execute as such guardian any documents which may be necessary to effectuate the continuance, maintenance and integrity of the present interest and investment of said minor in said partnership.

Done in Open Court this 2nd day of May, 1946.

T. I. FITZPATRICK,
Judge of the Superior Court.

[Endorsed]: Filed May 2, 1946.

EXHIBIT No. 8-H

[Title of Superior Court and Cause 103176.]

LETTERS OF GUARDIANSHIP

State of California,
City and County of San Francisco—ss.

Clarissa Shortall is hereby appointed Guardian of the Estate of Lois E. Senderman, a minor.

Witness, H. A. van der Zee, Clerk of the Superior Court of the State of California in and for

Exhibit No. 8-H—(Continued)

the City and County of San Francisco, with the Seal of said Court affixed.

Dated May 2, 1946.

By order of the Court,

[Seal] H. A. VAN DER ZEE,
Clerk.

/s/ By LUTHER DOBSON,
Deputy Clerk.

State of California,
City and County of San Francisco—ss.

I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of California; and that I will faithfully discharge the duties of Guardian of the Estate of the above named ward, according to law.

CLARISSA SHORTALL

Subscribed and sworn to before me May 2, 1946.

/s/ LUTHER DOBSON,
Deputy County Clerk.

[Endorsed]: Filed May 2, 1946.

EXHIBIT No. 9-I

[Title of Superior Court and Cause No. 103176.]

PETITION BY GUARDIAN FOR
INSTRUCTIONS

To the Honorable, the Superior Court of the State of California, in and for the City and County of San Francisco:

The petition of Clarissa Shortall, as guardian of the estate of Lois E. Senderman, a minor, respectfully represents:

1. That your petitioner was appointed guardian of the estate of said minor by this court on the 2nd day of May, 1946, and duly qualified as such on the 2nd day of May, 1946, whereupon on said day letters of guardianship were issued to her, which said letters have never been revoked or suspended and that she is now, and ever since has been, the duly appointed, qualified and acting guardian of the estate of said minor.

2. That on the 1st day of January, 1943, Lois J. Senderman, now Lois J. Newman, the mother of said minor Lois E. Senderman, as trustor and donor, and Richard S. Goldman as trustee, executed a Declaration of Trust wherein and whereby certain properties were irrevocably donated and placed in trust for the use and benefit of said Lois E. Senderman, a minor; that a true and correct copy of said trust is attached hereto and marked Exhibit "A".

Exhibit No. 9-I—(Continued)

3. That said Richard S. Goldman, the trustee named in said trust, died on the 1st day of March, 1946, and thereafter and on the 5th day of April, 1946, and upon the petition of Richard N. Goldman, as executor of the estate of Richard S. Goldman, the above-entitled court made its order appointing your petitioner herein, Clarissa Shortall, successor trustee in place and stead of said Richard S. Goldman, the deceased trustee; that a true and correct copy of said Petition and Order Appointing Successor Trustee in Place of the Deceased Trustee is attached hereto and marked Exhibit "B".

4. That Paragraph (3) of said trust hereinabove referred to and attached hereto and marked Exhibit "A" reads as follows:

"The Trustee may resign and discharge himself of the trust created hereunder by causing the property which he holds as Trustee to be transferred into the name of the duly appointed Guardian of said Lois E. Senderman, a minor. In the event of the death of the Trustee while this trust shall remain in force and effect his executors, administrators or heirs at law as the case may be, are hereby directed and empowered to immediately apply to a court of competent jurisdiction to deliver to the duly appointed guardian of Lois E. Senderman, a minor, that portion of the trust property as to which Lois E. Senderman is the beneficial owner. If no such Guardian has been appointed the executors, administrators or heirs at law of said deceased Trustee shall apply to a

Exhibit No. 9-I—(Continued)

Court of competent jurisdiction for the appointment of a Guardian to whom such property can be conveyed”.

That in accordance therewith and on the 2nd day of May, 1946, Richard N. Goldman, as executor of the estate of Richard S. Goldman, the deceased trustee, petitioned the above-entitled court for the appointment of Clarissa Shortall as guardian of the estate of said minor and thereafter and on said day your petitioner was appointed as such guardian; that a true and correct copy of said Order Appointing Guardian is attached hereto and marked Exhibit “C”.

5. That on said 2nd day of May, 1946, the said Clarissa Shortall resigned as such successor trustee and discharged herself of the aforesaid trust by causing the property which she held as trustee to be transferred into her name as the duly appointed guardian of said Lois E. Senderman, a minor.

6. That it was the intention of said Lois J. Newman, said trustor and donor, and of Richard S. Goldman, said Trustee, that said trust, Exhibit “A” hereto, be irrevocable and that the gift made thereby be irrevocable; and that the failure so to state specifically in said Declaration of Trust occurred through inadvertence and error and contrary to the express instructions of said Lois J. Newman.

7. That a controversy has arisen between your petitioner as guardian and Lois J. Newman, as trustor and donor of the aforesaid trust, relating to

Exhibit No. 9-I—(Continued)

the irrevocability of said trust, and of the gift made thereby and to the irrevocability of the transfer of said trust assets to your petitioner as guardian.

8. That said Declaration of Trust and the gift made thereby to said Lois E. Senderman were irrevocable by said trustor and that said trust terminated upon the appointment of your petitioner as guardian of the estate of said Lois E. Senderman and the transfer to her as said guardian of all the property belonging to said trust; that your petitioner as guardian holds said minor's property irrevocably for her use and benefit.

Wherefore, your petitioner prays for a hearing on this petition and for a decree of this court declaring that said trust and the gift made thereby were irrevocable by the trustor and donor, Lois J. Newman; that said trust terminated by the appointment of your petitioner as guardian and the transfer of the trust property to her as guardian; that your petitioner holds said minor's property irrevocably for her use and benefit; that an Order to Show Cause be directed to said Lois J. Newman and any other interested parties requiring them to appear before this court at a time and place to be fixed by the court to show cause why said Declaration of Trust and the gift to said minor made thereby should not be declared to be irrevocable, and further to show cause why your petitioner as guardian should not be held to hold said minor's property irrevocably for said minor's use

Exhibit No. 9-I—(Continued)

and benefit, and for such other and further relief as to the court may seem meet and proper in the premises.

CLARISSA SHORTALL,
Petitioner.

SAMUEL TAYLOR,
Attorney for Petitioner.

Duly Verified.

[Endorsed]: Filed April 22, 1947.

EXHIBIT No. 10-J

[Title of Superior Court and Cause No. 103176.]

AMENDED PETITION BY GUARDIAN FOR
INSTRUCTIONS

To the Honorable, the Superior Court of the State of California, in and for the City and County of San Francisco:

The petition of Clarissa Shortall, as guardian of the estate of Lois E. Senderman, a minor, respectfully represents:

1. That your petitioner was appointed guardian of the estate of said minor by this court on the 2nd day of May, 1946, and duly qualified as such on the 2nd day of May, 1946, whereupon on said day letters of guardianship were issued to her, which said letters have never been revoked or suspended and that she is now, and ever since has

Exhibit No. 10-J—(Continued)

been, the duly appointed, qualified and acting guardian of the estate of said minor.

2. That prior to the 1st day of January, 1943, Lois J. Senderman, now Lois J. Newman, the mother of said minor Lois E. Senderman, owned certain stock of Aztec Brewing Company, a corporation. Said stock was her separate property. On or shortly after January 1, 1943, said Lois J. Senderman orally created an irrevocable trust of 800 shares of said stock for the use and benefit of said Lois E. Senderman. Said trust was created by said Lois J. Senderman orally instructing Richard S. Goldman to hold said stock which he had in his possession, in trust irrevocably for the use and benefit of said Lois E. Senderman and said Richard S. Goldman orally agreeing to do so and to act as trustee.

3. That thereafter, Richard S. Goldman as trustee executed a Declaration of Trust dated as of January 1, 1943, a true and correct copy of which is attached hereto and marked Exhibit "A".

4. That said Richard S. Goldman, the trustee named in said trust, died on the 1st day of March, 1946, and thereafter and on the 5th day of April, 1946, and upon the petition of Richard N. Goldman, as executor of the estate of Richard S. Goldman, the above-entitled court made its order appointing your petitioner herein, Clarissa Shortall, successor trustee in place and stead of said Richard S. Goldman, the deceased trustee; that a true and correct copy of said Petition and Order Appoint-

Exhibit No. 10-J—(Continued)

ing Successor Trustee in place of the Deceased Trustee is attached hereto and marked Exhibit "B".

5. That Paragraph (3) of said trust hereinabove referred to and attached hereto and marked Exhibit "A" reads as follows:

"The Trustee may resign and discharge himself of the trust created hereunder by causing the property which he holds as Trustee to be transferred into the name of the duly appointed Guardian of said Lois E. Senderman, a minor. In the event of the death of the Trustee while this trust shall remain in force and effect his executors, administrators or heirs at law as the case may be, are hereby directed and empowered to immediately apply to a court of competent jurisdiction to deliver to the duly appointed guardian of Lois E. Senderman, a minor, that portion of the trust property as to which Lois E. Senderman is the beneficial owner. If no such Guardian has been appointed the executors, administrators or heirs at law of said deceased Trustee shall apply to a Court of competent jurisdiction for the appointment of a Guardian to whom such property can be conveyed."

That in accordance therewith and on the 2nd day of May, 1946, Richard N. Goldman, as executor of the estate of Richard S. Goldman, the deceased trustee, petitioned the above-entitled court for the appointment of Clarissa Shortall as guardian of the estate of said minor and thereafter and on said day your petitioner was appointed as such guardian; that a true and correct copy of said Order Appoint-

Exhibit No. 10-J—(Continued)

ing Guardian is attached hereto and marked Exhibit "C."

6. That on said 2nd day of May, 1946, the said Clarissa Shortall resigned as such successor trustee and discharged herself of the aforesaid trust by causing the property which she held as trustee to be transferred into her name as the duly appointed guardian of said Lois E. Senderman, a minor.

7. That it was the intention of said Lois J. Newman, said trustor and donor, and of Richard S. Goldman, said Trustee, that said trust, Exhibit "A" hereto, be irrevocable and that the failure so to state specifically in said Declaration of Trust occurred through inadvertence and error and contrary to the express instructions of said Lois J. Newman.

8. That a controversy has arisen between your petitioner as guardian and Lois J. Newman, as trustor and donor relating to the irrevocability of said trust, Exhibit "A" hereto and to the irrevocability of the transfer of said trust assets to your petitioner as guardian.

9. That said Declaration of Trust, Exhibit "A" hereto was irrevocable by said trustor and that said trust and said oral trust terminated upon the appointment of your petitioner as guardian of the estate of said Lois E. Senderman and the transfer to her as said guardian of all the property belonging to said trust; that your petitioner as guardian holds said minor's property irrevocably for her use and benefit.

Exhibit No. 10-J—(Continued)

Wherefore, your petitioner prays for a hearing on this petition and for a decree of this Court declaring that said Lois J. Senderman orally created an irrevocable trust for the use and benefit of her daughter, Lois E. Senderman, and that said written trust was irrevocable; that said oral trust and said written trust terminated by the appointment of your petitioner as guardian and the transfer of the trust property to her as guardian; that your petitioner holds said minor's property irrevocably for her use and benefit; that an Order to Show Cause be directed to said Lois J. Newman and any other interested parties requiring them to appear before this Court at a time and place to be fixed by the Court to show cause why said oral trust and Declaration of Trust, Exhibit "A" hereto and the gift to said minor made thereby should not be declared to be irrevocable, and further to show cause why your petitioner as guardian should not be held to hold said minor's property irrevocably for said minor's use and benefit, and for such other and further relief as to the Court may seem meet and proper in the premises.

CLARISSA SHORTALL,
Petitioner.

SAMUEL TAYLOR,
Attorney for Petitioner.

Duly Verified.

[Endorsed]: Filed April 22, 1947.

EXHIBIT No. 11-K

[Title of Superior Court and Cause No. 103176.]

ORDER PURSUANT TO AMENDED
PETITION BY GUARDIAN FOR
INSTRUCTIONS

The amended petition of Clarissa Shortall, as guardian of the Estate of Lois E. Senderman, a minor, for instructions coming on regularly for hearing this 10th day of July, 1947, and Clarissa Shortall appearing in person and by her attorney, Samuel Taylor, Esq., and Lois J. Newman (formerly Lois J. Senderman) appearing in person and by her attorney, A. E. Levinson, Esq., and evidence both oral and documentary having been offered and introduced by the respective parties and the issue having been fully argued by counsel for the respective parties, and the Court having fully considered the evidence and arguments accordingly finds:

1. Notice of this hearing has been duly and regularly given according to law to Lois J. Newman (formerly Lois J. Senderman) whom the Court finds to be the mother of said minor and the person charged with the sole custody, care, support and control of said minor, and to Aaron Senderman whom the Court finds to be the father of said minor, and to the Commissioner of Internal Revenue, Washington, D. C.; the Secretary of the Treasury, Washington, D. C.; F. M. Harless, Internal Revenue Agent in Charge, 74 New Montgomery Street,

Exhibit No. 11-K—(Continued)

San Francisco; and the Collector of Internal Revenue, First District of California, 100 McAllister Street, San Francisco, California.

2. The allegations of said amended petition are true. Lois E. Senderman is a minor of the age of approximately twelve years and a resident of the City and County of San Francisco, State of California.

3. Clarissa Shortall was appointed guardian of the estate of said minor by this Court on the 2nd day of May, 1946, and duly qualified as such on said date whereupon on said date letters of guardianship were issued to her, which said letters have never been revoked or suspended and she ever since has been and now is the duly appointed, qualified and acting guardian of the estate of said minor.

4. Prior to the 1st day of January, 1943, Lois J. Senderman (now Lois J. Newman), the mother of said minor, owned approximately $2396\frac{7}{8}$ shares of stock of Aztec Brewing Company, a California corporation. Said stock was her separate property.

5. On or within a few days after January 1, 1943, said Lois J. Newman orally created an irrevocable trust of 800 shares of said stock for the use and benefit of said minor, Lois E. Senderman. Said trust was created by said Lois J. Newman orally instructing her attorney, Richard S. Goldman, to hold said stock immediately and irrevocably for the use and benefit of said minor, and said Richard S. Goldman orally agreeing to do so and to act immediately as such trustee. Said stock was

Exhibit No. 11-K—(Continued)

in the possession of said Richard S. Goldman prior to and at the time of the creation of said trust.

6. An oral irrevocable trust of said stock was created by said conversation or within a few days after January 1, 1943, and continued until terminated on the 2nd day of May, 1946, by the appointment by this Court of Clarissa Shortall as guardian of the estate of said Lois E. Senderman and by the transfer of the trust property by Clarissa Shortall, successor trustee to said Richard S. Goldman, to Clarissa Shortall as guardian of the estate of said Lois E. Senderman.

7. Some six or seven months after the creation of said oral trust said Richard S. Goldman executed a written declaration of trust, a true and correct copy of which is attached to said amended petition as Exhibit "A." Said written trust, Exhibit "A," was intended to embody the terms of said oral trust, but through inadvertence and mistake on the part of said Richard S. Goldman and contrary to the express instructions and intent of said Lois J. Newman (formerly Lois J. Senderman) and contrary to the intent of said Richard S. Goldman, no express provision was inserted in said written trust (Exhibit "A") to the effect that it was irrevocable. The intent and the instructions to said Richard S. Goldman of said Lois J. Newman, and the intent of said Richard S. Goldman with respect to said trust were that it be irrevocable. The execution of said written instrument did not

Exhibit No. 11-K—(Continued)

terminate said oral trust, but said oral trust continued in full force and effect until terminated as hereinbelow stated.

8. Said Richard S. Goldman died on the 1st day of March, 1946, and thereafter on the 5th day of April, 1946, and upon the petition of Richard N. Goldman as executor of the estate of Richard S. Goldman, the above-entitled Court made its order appointing Clarissa Shortall successor trustee in place and stead of said Richard S. Goldman, the deceased trustee. A true and correct copy of said petition and order appointing successor trustee in place of deceased trustee is attached to the amended petition herein as Exhibit "B."

9. On the 2nd day of May, 1946, Richard N. Goldman as executor of the estate of said Richard S. Goldman, the deceased trustee, petitioned this Court for the appointment of Clarissa Shortall as guardian of the estate of said minor and thereafter and on said day Clarissa Shortall was appointed as such guardian. A true and correct copy of said order appointing guardian is attached to the amended petition herein as Exhibit "C."

10. On said 2nd day of May, 1946, said Clarissa Shortall resigned as such successor trustee and caused the property which she held as trustee to be transferred into her name as the duly appointed guardian of the estate of said Lois E. Senderman, a minor. Said oral trust and said written trust

Exhibit No. 11-K—(Continued)

terminated upon the appointment of Clarissa Shortall as guardian of the estate of said minor and the transfer to her as said guardian of all the trust property. Said guardian holds said minor's property irrevocably for her use and benefit.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that:

1. On or within a few days after January 1, 1943, said Lois J. Senderman (now Lois J. Newman) orally created an irrevocable trust by instructing Richard S. Goldman to act as trustee of 800 shares of stock of Aztec Brewing Company, the certificates of which he held in his possession and by said Richard S. Goldman orally agreeing to do so. Said oral trust became effective immediately upon its creation and continued in effect until terminated by the appointment of Clarissa Shortall as guardian of the estate of said minor on May 2, 1946, and the transfer on or about said date of said trust property to said guardian.

2. Some six or seven months after the creation of said oral trust said Richard S. Goldman executed a written trust. A true and correct copy of said written trust is attached to the amended petition herein as Exhibit "A." Said written trust was intended to embody the terms of such oral trust.

3. Said written trust did not terminate or modify said oral trust theretofore created but said oral trust continued in effect until terminated on May

Exhibit No. 11-K—(Continued)

2, 1946, by the appointment of Clarissa Shortall as guardian of the estate of said Lois E. Senderman and the transfer of the trust property to her as said guardian.

4. Said Clarissa Shortall as such guardian has held and now holds said property irrevocably for the use and benefit of said minor.

Done in open court this 10th day of July, 1947.

T. I. FITZPATRICK,
Judge of the Superior Court.

[Endorsed]: Filed July 24, 1947.

Form 109
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised September 1946)

(Shown for use of Collector)

RECEIVED

RECEIVED BY Newk 15 DE 1947
UNITED STATES
GIFT TAX RETURN
CALENDAR YEAR 1946

(Space for use of Donor)

(To be filed in duplicate with the Collector of Internal Revenue for the donor's district and later than the 15th day of March following the close of the calendar year)

DONOR LOIS J. NEWMAN (formerly Lois J. Sender)
(Given name) (Middle name or initial) (Surname)
ADDRESS In care of Samuel Taylor
406 Montgomery Street
CITIZENSHIP _____
RESIDENCE San Francisco 4, California

RECEIVED
94 JUN 24 1947
COLL. INT. REVENUE
THE DISTRICT OFFICE
ESTABLISHED MAY 7

Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$3,000 in value (or regardless of value if a future interest) as follows? (Answer "Yes" or "No")

- By the creation of a trust (.....) or the making of additions to a trust previously created (.....) in other than the hands of a person or persons other than yourself, and with respect to which you retain the power to revoke the beneficial title to the property in yourself or to change the beneficiaries or their proportionate benefits; or by relinquishing every such power that was retained in a previously created trust (.....).
- By purchasing a life insurance policy (.....) or the purchase of a premium on a previously issued policy (.....), the proceeds of which are in either case payable to a beneficiary other than your estate, and with respect to which you retained no power to revoke the economic benefits in yourself or your estate or to change the beneficiaries or their proportionate benefits; or by relinquishing every such power that was retained in a previously issued policy (.....).
- By permitting another to withdraw funds from a joint bank account which was deposited by you (.....).
- By conveying title to another and yourself, tenants or to your wife or husband and yourself as tenants by the entirety (.....).
- By the exercise or release of a power of appointment, except as provided in subparagraphs 1 and 2 of section 8 of the instructions (.....).
- By conveying community property to another, or by converting community property into separate property of your spouse or into a tenancy by the entirety of yourself and spouse (or other similar ownership), to the extent of your interest as prescribed by the rules set forth in section 9 of the instructions (.....).
- By any other method, direct or indirect (.....).

If the answer is "Yes" to any of the foregoing, such a transfer should be fully disclosed under schedule A. SEE ATTACHED SCHEDULE

COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR

SCHEDULE

1. Total included amount of gifts for year (item c, schedule A)	\$	NONE
2. Total deductions for charitable, public, and similar gifts for year (item c, schedule B)	\$	
3. Specific exemption claimed (see section 11 of instructions)		
4. Total deductions (item 2 plus item 3)	\$	
5. Amount of net gifts for year (item 1 minus item 4)	\$	NONE

COMPUTATION OF TAX (see section 15 of instructions)

1. Amount of net gifts for year (item 5, above)	\$	NONE
2. Total amount of net gifts for preceding years (item c, schedule C)	\$	NONE
3. Total net gifts (item 1 plus item 2)	\$	NONE
4. Tax computed on item 3	\$	NONE
5. Tax computed on item 2	\$	NONE
Tax on net gifts for year (item 4 minus item 5)	\$	NONE

BUREAU RECORD

AFFIDAVIT OF PERSON FILING RETURN

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Federal gift tax law and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedule A, was made by me (the donor) during said calendar year.

NOTARIAL SEAL

Sworn to and subscribed before me this 26 day of June, 1947
John J. Miller
(Signature and title of officer administering oath)

Lois J. Newman
(Signature of donor/transferor/other person)
LOIS J. NEWMAN
In care of Samuel Taylor
406 Montgomery Street
San Francisco 4

I swear (or affirm) that I prepared this return, including the accompanying schedules and statements, if any, and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete return and that all the information respecting the donor's gift tax liability of which I have any knowledge.

NOTARIAL SEAL

Sworn to and subscribed before me this 26 day of June, 1947
John J. Miller
(Signature and title of officer administering oath)

Samuel Taylor
(Signature of person preparing return)
SAMUEL TAYLOR
406 Montgomery Street
San Francisco 4, California
(Address of person preparing return)

Exhibit No. 12-L—(Continued)

Schedule Attached to 1946 Gift Tax Return of Lois J. Newman (Formerly Lois J. Senderman.)

On January 1, 1943, the donor (then known as Lois J. Senderman) created an irrevocable trust and placed therein 800 shares of Aztec Brewing Company stock for the benefit of her minor daughter, Lois E. Senderman. Richard S. Goldman was the trustee.

Said gift was duly reported by a gift tax return (Form 709) filed on or about March 15, 1944.

The Revenue Agent's office of the Bureau of Internal Revenue, in the course of the examination of donor's income tax return for 1943, has raised a question as to whether said trust was irrevocable. However, if said trust was a revocable gift of said property, or of the partnership interest of Aztec Brewing Company, a partnership (to which it was transformed between January 1, 1943, and the dates hereinafter mentioned), the gift of said property became irrevocable upon the death of Richard S. Goldman, the trustee, on March 1, 1946, and the appointment of Clarissa Shortall as guardian of the estate of Lois E. Senderman, a minor, thereafter on May 2, 1946, by the Superior Court of the State of California, in and for the City and County of San Francisco (No. 103176 in said Court), and the transfer of the trust property to said guardian immediately thereafter. Donor contends that there was no gift during the year 1946, but in view of the question as to revocability of the trust created

Exhibit No. 12-L—(Continued)

in 1943 which has been raised by the Revenue Agent, this gift tax return is being filed as a protective measure.

State of California,

City and County of San Francisco—ss.

Lois J. Newman (formerly Lois J. Senderman), being duly sworn, deposes and says:

The reason for the late filing of the attached gift tax return for the calendar year 1946 is as follows: Affiant did not believe, and still does not believe that she made any gifts in 1946 or that a gift tax return was due for said year. Her counsel have so advised her. However, her counsel have further advised her that in view of a question which has recently been raised by the Revenue Agent's office in connection with an examination of her income tax return for 1943, as explained in the statement under Schedule A of this return, it would be advisable for her to file a gift tax return for 1946 as a protective measure. Immediately upon receiving such advice from counsel affiant requested her counsel to prepare and file this return.

/s/ LOIS J. NEWMAN.

Subscribed and sworn to before me this 20th day of June, 1947.

[Seal] /s/ EDITH LOWERY

Notary Public in and for the City and County of San Francisco, State of California. My commission expires December 24, 1948.

19 T. C. No. 87

The Tax Court of the United States

Docket No. 29650

Promulgated January 22, 1953

LOIS J. NEWMAN (Formerly LOIS J.
SENDERMAN) Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

FINDINGS OF FACT AND OPINION

1. Held, neither the oral trust nor the written trust here involved was "expressly made irrevocable by the instrument creating the trust" * * * as provided in section 2280 Civil Code of California.

2. Held, transfer of trust assets on May 2, 1946, to guardianship estate of minor beneficiary constituted a taxable gift. *Harris vs. Commissioner*, 340 U.S. 106, distinguished.

3. The value of the gift consummated May 2, 1946, held, not to include a certain item in the amount of \$64,035.05, the existence of which is the subject matter of a separate income tax proceeding by the same taxpayer in another docketed case currently pending hearing before this Court.

Samuel Taylor, Esq., and Walter G. Schwartz, Esq., for the petitioner.

Edward H. Boyle, Esq., for the respondent.

This proceeding involves a deficiency in gift tax

of petitioner for the year 1946 in the amount of \$71,195.99.

The issues presented are: (1) Whether the transfer by petitioner in 1943 of certain property in trust constituted a completed gift in that year or whether, as determined by respondent, the completed gift occurred in 1946 upon termination of the trust and distribution of the corpus to the guardian for the beneficiary; and (2) whether such gift, if effected in 1946, included an item described in respondent's notice of deficiency as "Overpayment of Income Tax and Accrued Interest for the Years 1943-1945" at a value of \$64,035.05.

One other issue raised by the pleadings herein has been settled by stipulation of the parties and will be reflected in a Rule 50 computation.

Findings of Fact

So much of the facts as were stipulated are made a part hereof by this reference.

The petitioner is an individual residing in Sherman Oaks, California. The gift tax return for the calendar year 1946, here involved, was filed on or about June 23, 1947, with the collector of internal revenue for the first district of California, at San Francisco.

Petitioner was divorced from Aaron Senderman in 1940. Thereafter she was unmarried and her name at all times material hereto prior to December, 1944, was Lois J. Senderman. In December, 1944, petitioner married Louis Newman, and her

name from that time to the present has been Lois J. Newman. Petitioner has had only one child, a daughter, named Lois E. Senderman, who was born on May 14, 1935.

For a number of years prior to January 1, 1943, petitioner owned as her separate property 2,396 $\frac{7}{8}$ shares of stock of Aztec Brewing Company (hereinafter called Aztec), a California corporation operating a brewery in San Diego, California. These shares represented approximately one-fourth of the issued and outstanding stock of such corporation, and had been inherited by petitioner from her parents in 1935.

On or about January 1, 1943, Richard S. Goldman, who was petitioner's attorney from 1935 until his death in 1946, received from petitioner 800 shares of stock in Aztec, to be held in trust by him for petitioner's daughter, Lois E. Senderman. At the time of the receipt, Goldman orally declared himself to be trustee of such trust, effective immediately. Some six or seven months thereafter, Goldman, as trustee, executed a written declaration of trust under which he declared himself trustee of 800 shares of Aztec stock for the benefit of Lois E. Senderman. This declaration of trust was predated to January 1, 1943. Such declaration of trust was not "expressly made irrevocable."

Petitioner filed Federal and State of California gift tax returns for the calendar year 1943 in which she reported a gift to her daughter of 800 shares of Aztec stock by reason of the creation of the foregoing trust. The value of such gift was reported in

the Federal return as \$30,000 with no gift tax payable thereon.

On or about February 24, 1944, Aztec Brewing Company, a limited partnership, was formed. On or about March 31, 1944, Aztec Brewing Company, a corporation, was dissolved. The assets and liabilities of the corporation were transferred to the partnership. The stockholders in the corporation became partners in the new partnership with partnership interests proportionate to their respective stockholdings in the corporation. The trust for Lois E. Senderman became a limited partner with an 8 per cent partnership interest. The fair market value of an 8 per cent interest as a limited partner of Aztec, a limited partnership, on May 2, 1946, and throughout the calendar year 1946, was \$151,051.09.

On March 1, 1946, Richard S. Goldman died. On March 26, 1946, Richard N. Goldman, his son, was appointed the executor of his estate and on that day qualified as such. On April 5, 1946, Clarissa Shortall, as attorney for Richard N. Goldman, filed a petition for appointment of successor trustee or trustees in place of the deceased trustee, and was appointed on that day successor trustee to Richard S. Goldman by order of the Superior Court in and for the city and county of San Francisco, California.

On May 2, 1946, upon petition of the substitute trustee so appointed, the Superior Court in and for the city and county of San Francisco, California, appointed Clarissa Shortall as guardian of the estate of Lois E. Senderman. On that date the

assets of the trust for the minor, Lois E. Senderman, were transferred to Clarissa Shortall pursuant to the court order appointing her as guardian. Clarissa Shortall had been associated with the elder Goldman and had participated with him in the handling of the trust matters. The appointment of a guardian and creation of the guardianship estate was provided for in the original trust indenture executed as of January 1, 1943, upon resignation or death of the original trustee.

After the revenue agent, who examined the tax returns of petitioner and her daughter, raised a question as to the revocability of the daughter's trust, Clarissa Shortall, on or about April 22, 1947, as guardian for such minor, filed a petition with the Superior Court in and for the city and county of San Francisco, California, for instructions. Paragraph 6 thereof reads, in part, as follows:

6. That it was the intention of said Lois J. Newman, said trustor and donor, and of Richard S. Goldman, said Trustee, that said trust, * * * be irrevocable and that the gift made thereby be irrevocable; and that the failure so to state specifically in said Declaration of Trust occurred through inadvertence and error and contrary to the express instructions of said Lois J. Newman.

On or about June 23, 1947, Clarissa Shortall further filed with such court an amended petition for instructions in which, for the first time, reference was made to the existence of an oral trust. In addition, it is stated therein that through inadvertence

and error the written trust failed to contain an express provision as to its irrevocability.

On June 24, 1947, petitioner filed, as a protective measure, a gift tax return relating the history of the trust and claiming no gift tax then due for the year 1946, such return showing no tax due.

On July 10, 1947, a court hearing was held on the amended petition and evidence, both oral and documentary, was offered. Clarissa Shortall, as guardian, appeared in person and by her attorney. Petitioner also appeared in person and by her attorney. After the case was heard and argued the court entered an order wherein it adjudged and decreed that:

1. On or within a few days after January 1, 1943, said Lois J. Senderman (now Lois J. Newman) orally created an irrevocable trust by instructing Richard S. Goldman to act as trustee of 800 shares of stock of Aztec Brewing Company, the certificates of which he held in his possession and by said Richard S. Goldman orally agreeing to do so. Said oral trust became effective immediately upon its creation and continued in effect until terminated by the appointment of Clarissa Shortall as guardian of the estate of said minor on May 2, 1946, and the transfer on or about said date of said trust property to said guardian.

2. Some six or seven months after the creation of said oral trust said Richard S. Goldman executed a written trust. * * * Said written trust was intended to embody the terms of said oral trust.

3. Said written trust did not terminate or modify said oral trust theretofore created but said oral

trust continued in effect until terminated on May 2, 1946, by the appointment of Clarissa Shortall as guardian of the estate of said Lois E. Senderman and the transfer of the trust property to her as said guardian.

4. Said Clarissa Shortall as such guardian has held and now holds said property irrevocably for the use and benefit of said minor.

* * * * *

The petitioner and her minor daughter, during the calendar year 1943, and during all subsequent years, were on a calendar year cash basis for Federal and State of California income tax purposes. The trust for the minor during the calendar year 1943 and during all subsequent years until its termination in 1946, was on a calendar year cash basis for Federal and State of California income tax purposes. For the calendar year 1943 and for all subsequent years, the trust for Lois E. Senderman (up to the time of its termination) and/or that for the minor reported in their respective Federal and State of California income tax returns the entire income from 800 shares of Aztec stock and from the partnership which replaced that corporation and from the other investments which were purchased with the income from the 800 shares and the distributions from the partnership.

By means of letters of the type commonly known in Federal tax circles as 30-day letters, addressed to the trust and to the minor, both of which letters being dated August 25, 1949, the Internal Revenue Agent in Charge, San Francisco Division, proposed

overassessments in income tax in favor of the trust and of the minor for the calendar years 1943 through 1945 in the aggregate amount of \$62,763.47, as follows:

Calendar Year	Taxpayer	Amount of Proposed Overassessment
1943	Lois E. Senderman, a minor	\$ 3,285.48
1944	Lois E. Senderman, a minor	6,776.42
1945	Lois E. Senderman Trust	52,701.57

On March 3, 1950, the trust and the minor filed protests with the Bureau of Internal Revenue against such overassessments. No part of any of the proposed overassessments nor any interest thereon has been received by the trust or by the minor nor has any part thereof been scheduled for refund to the trust or the minor.

The Commissioner, in a notice of deficiency, dated January 23, 1951, determined deficiencies in income tax against the petitioner for the calendar years 1943 to 1947, inclusive, as follows:

Year	Deficiency*
1943	\$ 7,575.67
1944	43,486.63
1945	63,164.93
1946	102,072.23
1947	28,084.93

These deficiencies are based mainly, and the overassessments, referred to above, are based wholly, upon the inclusion in petitioner's income of all of the income reported by the trust and by the minor during the calendar years 1943 to 1947, inclusive (except that the deficiency for 1944 is based upon an addition to petitioner's income of approximately \$78,000, of which approximately \$20,000 represents

income reported by the minor). The amount of the deficiency determined against petitioner for each of the years involved, which is attributable to inclusion in petitioner's income of all of the income reported by the trust and by the minor is in excess of the amount of the overassessment proposed in favor of the trust or the minor for the same calendar year. The petitioner, on April 9, 1951, filed a petition with this Court, which petition was docketed as No. 33431, in which it was alleged that the deficiencies were erroneously asserted and that the inclusion of the income of the trust and the minor in petitioner's income for each of the calendar years is erroneous. That proceeding is now pending before this Court.

Opinion

Van Fossan, Judge: The parties to this proceeding involving gift taxes for 1946 agree that the transfer by petitioner of the property in controversy for the benefit of her minor daughter constituted a taxable gift within the purview of sections 1000 (a) and 1002 of the Internal Revenue Code.¹

¹ Sec. 1000. Imposition of Tax.

(a) For the calendar year 1940 and each calendar year thereafter a tax, computed as provided in section 1001, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident of property by gift. * * *

* * * * *

Sec. 1002. Transfer for Less Than Adequate and Full Consideration.

Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value

They disagree as to the year, 1943 or 1946, in which the gift was completed. Respondent has determined that the taxable transfer took place in 1946. The pertinent facts are set forth above.

It is respondent's contention that the 1943 trust is not expressly made irrevocable by the declaration of trust instrument creating it, and that, having been so created subsequent to 1931, the trust was revocable under section 2280 of the Civil Code of California, as amended in 1931.² He argues, therefore, that the transfer of the trust corpus to the guardian of the estate of petitioner's minor daughter on May 2, 1946, constituted a completed gift by the petitioner-donor at that time. Respondent makes no claim in the instant litigation that the income of the trust from its creation in 1943 until its termination in 1946 was taxable to petitioner under either section 22 (a) or 166 of the Code. Citing and relying upon our opinion in *Erik Krag*, 8 T.C. 1091, as controlling, respondent argues on brief that the decree of the local court amounted only to a

of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

² Sec. 2280. [Revocation of trust.] Unless expressly made irrevocable by the instrument creating the trust, every voluntary trust shall be revocable by the trustor by writing filed with the trustee. When a voluntary trust is revoked by the trustor, the trustee shall transfer to the trustor its full title to the trust estate. * * *

consent decree; that, moreover, being made after the trust terminated it was a moot decree; and that, therefore, we are not bound to give any effect to it whatsoever.

Petitioner, on the other hand, maintains that not only does the trust instrument in controversy meet the requirements of section 2280, *supra*, as respects its irrevocability but also that the oral trust earlier created was intended to be, and was, irrevocable, and that both trusts remained in existence from the time they were created until they were both terminated in 1946. To support this position, petitioner points to the July 10, 1947 decree of the Superior Court in and for the city and county of San Francisco so construing the trusts. Petitioner cites such cases as *Susan B. Armstrong*, 38 B.T.A. 658; *Estate of Cyrus M. Beachy*, 15 T.C. 136; *Blair vs. Commissioner*, 300 U.S. 5, and others of similar import for the proposition that the State court's decree is dispositive of the issue before us and that we are bound to give effect thereto.

The question here in issue turns upon a proper construction of the trusts created by petitioner in 1943. Whether either or both trusts were revocable or "expressly made irrevocable" involves an interpretation of the law of California in which State such trusts were created and administered. The decree of the State court, relied upon by petitioner, involving, as it does, the same subject matter and purporting to construe the property laws of California with regard thereto is conclusive of the issue here presented if the Court decree represented an

independent judgment in a real controversy between the parties and was not merely a consent decree entered pro forma in a friendly suit. On the facts here present we cannot catalogue the instant proceeding for instruction as a real and bona fide controversy. There was no controversy between the parties and no independent judgment was rendered. *Estate of Ralph Rainger*, 12 T.C. 483, affirmed 183 F.2d 587 (C.A.9); certiorari denied .. U.S. ..; *Marjorie F. Ridgely Saulsbury vs. United States*, .. F.2d .. (C.A.5) (November 10, 1952).

The facts in this case are so strikingly parallel to those in *Erik Krag, supra*, and *Gaylord vs. Commissioner* (C.A.9), 153 F.2d 408, affirming 3 T.C. 281, and the holding of those cases is so clearly applicable that we need go little further than to cite these controlling authorities. Every question that could be raised, and every contention that is here advanced, is answered therein. Any distinction between those cases and that here before us is in form and not in substance.

There can be no question that the written agreement, as drafted and as in effect in the years 1943 through 1946, was not "expressly made irrevocable by the instrument creating the trust" [emphasis supplied], and under the cases cited must be deemed revocable by the donor under the statute. Nor was the attempt to have the trust construed as irrevocable, as appears in the order of the court of July 24, 1947, effective for tax purposes. *Gaylord vs. Commissioner, supra*. It could not, by a process of retroactivity, defeat the incidence of the Federal

tax laws. Here, as in the Gaylord case, it cannot be said that "the gift tax returns with their references to irrevocability had the effect of amending the trust declaration."

Whatever the parties may have had in mind, we are more impressed by what they did in furtherance of their intention, or, more accurately, what they did not do.

The existence of the oral trust was not mentioned in the written instrument, albeit petitioner now contends it was in full force and effect for six or seven months. When the written trust was being prepared, two lawyers, one of them the trustee under the trust, the other his associate and successor as advisor to the trust, both experienced and fully cognizant of the desires of the donor, participated in the drafting of the instrument. Despite the fact, if it be a fact, that both lawyers understood that petitioner wished an irrevocable trust, no reference was made to an existing irrevocable oral trust nor was the word "irrevocable," or any word to the same effect, used or incorporated specifically, or by interpretation or by proper inference, in the writing. Again, difficult to comprehend, is the fact that the oral trust on which petitioner now so heavily leans was not mentioned in the petition filed in April, 1946 for appointment of a successor trustee, nor in the petition for appointment of a guardian, nor in the order appointing the guardian, nor yet again, in the original petition by guardian for instructions. All of these documents refer to a written trust and in one of them the statement is made that through

error and inadvertence the express mention of irrevocability was omitted from the written declaration of trust.

It was not until June 23, 1947, and after the revenue agent had questioned the character of the trust, that we find mention of the oral trust.

Confronted with these facts, petitioner falls back on the oral trust, contending that at the time it was declared it was expressly made irrevocable and that it remained in existence even after the execution of the written trust. Petitioner points to testimony of petitioner and her lawyer attesting to such fact. Here we would simply quote the old saying,—"actions speak louder than words." The inconsistencies in the evidence, the presence of contradicting documents, and the inferences to be drawn from the whole record lead us reluctantly to the conclusion that the spoken word must yield to the documented conclusion that no irrevocable oral or written trust existed. Moreover, if anything additional need be called to attention to fortify the conclusion as to the oral trust, such trust was rendered wholly void and was effectively wiped out by the back dating of the written trust to January 1, 1943. Certainly, there cannot co-exist two such trusts employing the same corpus.

Where, as here, the issue presented on the evidence raises a question of credibility of testimony, the Court is obliged to weigh the evidence carefully, determine the probabilities of accuracy, and accept or discount the evidence by consideration of the interests of the parties, and thus, from the whole record, determine where lies the truth.

If the oral trust was intended to be irrevocable, why, when it was transmuted into the written trust, did the written trust fail to mention either the oral trust or the word "irrevocable"? We find it impossible to believe that Goldman, an experienced lawyer, presumptively familiar with the provisions of Section 2280 of the California Code and cognizant of all the facts, would inadvertently omit from the declaration of the trust the express provision called for by the statute. One sentence of five words would have sufficed to have removed all question as to the revocability of the trust. Nor can we blink the fact the petition for instructions was not filed in the California Superior Court until 1947 when the revenue agent raised the question of revocability of the trust, with possible Federal tax consequences.

By changing the names of the parties and a few dates, the pattern in the instant case fits almost precisely into the situation existing in the Krag and Gaylord cases. On the authority of the Krag and Gaylord cases cited above, we sustain respondent's holding that the 1943 written trust, here under study, was a revocable trust; that whatever its form, the oral trust was superseded by the written trust; that the transfer of title occurred in 1946 when the written trust was terminated and the trust property transferred to the guardian for the minor, and that petitioner should be taxed accordingly.

Having found that neither of the trusts created in 1943 was, under California law, irrevocable, and that accordingly no completed gift was consummated in that year, we turn now to consider the facts tax-wise of the May 2, 1946 transfer of trust

assets to the guardianship estate of petitioner's minor daughter. Citing *Harris vs. Commissioner*, 340 U.S. 106, petitioner argues that, since the transfer was pursuant to a court order, it does not represent a taxable gift.

The factual situation present in the *Harris* case is clearly distinguishable at critical and important points, and would appear to have no application here. That case involved a divorce proceeding and a property settlement agreement incident thereto. The settlement in question was clearly an arm's length transaction. The element of donative intent was absent. Nor was a promise or an agreement an operative factor. The transfer was made dependent upon and pursuant to a decree of a court charged under state law with decreeing a just and equitable disposition of the community and separate property of the parties before it. Nevada Compiled Laws, Section 9463.

Although she failed legally to effectuate a valid gift for tax purposes, since, as we have seen, it was done by a trust revocable under California law, she, nevertheless, harbored the same donative intent at all times here material. Moreover, the role of the state court here was not that of arbiter between two contesting parties. The terms of the trust instrument itself provided for the termination of the trust and the transfer of the corpus thereof to a guardian. As is customary in the cases involving property rights of a minor, application was made to a court of competent jurisdiction for authorization so to transfer the trust assets and for appoint-

ment of a guardian to receive and hold the same. The court's function was merely to see that the transfer was in accord with the trust instrument and to appoint a fit guardian. It exercised discretion only with respect to the latter.

But, contends petitioner, the doctrine of the Harris case is not to be limited and must apply whenever a transfer of property is made pursuant to a court decree. With this contention, we must disagree. Such broad application would have the effect of repealing by judicial process the gift tax statute and would make possible avoidance of a gift tax by the simple expedient of making any gift contingent upon a consent decree of a local court. We cannot believe that the Supreme Court intended or contemplated any such result. Rather, we feel that the drastic consequences " * * * of such a broad application of the Harris case * * * require the strictest limitation of that case to its actual facts." See Taylor and Schwartz, "Tax Aspects of Marital Property Agreements," 7 *Tax Law Review* 9, 49 (November, 1951) and the rationale contained therein.

The final issue is whether the gift which we have held was effected on May 2, 1946, included the item described in respondent's notice of deficiency "Overpayment of income tax and accrued interest for the years 1943-1945" in the amount of \$64,035.05.

Respondent contends that since no valid gift was consummated in 1943, the corpus and the earnings thereon from 1943 to May 2, 1946, constituted the property of petitioner; that it was a mistake and

error for the beneficiary to pay income tax on such earnings for 1943 and 1944 and for the trust so to do for 1945; that having mistakenly and erroneously paid such tax, the trust and/or the beneficiary were entitled, as of May 2, 1946, to a return or refund of the taxes so paid, together with interest; that such right amounted, in effect, to a claim for refund, an account receivable, or a chose in action; that this claim for refund, account receivable, or chose in action constituted a valuable property right, which, until May 2, 1946, remained the property of the trustor just as the amount of income taxes and interest would have remained the property of the trustor had no payment been made to the Commissioner and had they remained at all times a part of the trust corpus; and finally, that upon termination of the trust and transfer of the corpus to the guardian for the beneficiary, the property right, as part of the trust corpus, passed to the guardian beyond the control of the trustor and was part of the gift consummated at that time.

While respondent's argument might conceivably be of some weight if the income tax liability were here involved, we feel it to be misplaced and beside the point in the present posture of the parties and the issue involved. The very existence of the valuable property right which respondent says was transferred from petitioner to the guardianship estate has at all times material been in dispute and is presently being contested in another action pending before this Court. Therefore, such contingent property right cannot be said to be in esse prior to

Ordered and Decided: That there is a deficiency of \$50,079.84 in gift tax for the year 1946.

[Seal] /s/ ERNEST H. VAN FOSSAN,
Judge.

Entered May 15, 1953.

In the United States Court of Appeals
for the Ninth Circuit

T.C. Docket No. 29650

LOIS J. NEWMAN (formerly LOIS J.
SENDERMAN), Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

Taxpayer, the petitioner in this cause, by Martin Gang, Norman R. Tyre and Louis M. Brown, counsel, hereby files her petition for a review by the United States Court of Appeals for the Ninth Circuit of the decision by The Tax Court of the United States promulgated on January 22, 1953 and entered on May 15, 1953, 19 TC., No. 87, determining deficiency in petitioner's gift tax for the year 1946 in the amount of \$50,079.84, respectfully shows:

I.

The petitioner, Lois J. Newman (formerly Lois J. Senderman), is a resident of the County of Los Angeles, State of California.

The aforesaid decision of the Tax Court of the United States may be reviewed by the United States Court of Appeals for the Ninth Circuit, the petitioner having filed a gift tax return for the year 1946 in the Collector's office for the First District of California at San Francisco, California.

II. Nature of the Controversy.

The controversy involves the determination of the year in which petitioner made a gift. The petitioner made a gift in trust to her daughter in 1943. She filed Federal and State gift tax returns. The value of the gift was reported in the Federal return as \$30,000.00 with no gift tax payable thereon. The petitioner asserts that a completed gift occurred in 1943.

The respondent asserts that the completed gift occurred in 1946. The gift in 1943 was made to a trustee who died in 1946. Upon his death in 1946 the corpus of the trust was distributed to the guardian of the beneficiary and by reason thereof, respondent asserts that the completed gift occurred in 1946.

III.

The said taxpayer, being aggrieved by the findings of fact and conclusions of law contained in the said findings and opinion of the Court, and by its decision entered pursuant thereto, desires to obtain a review thereof by the United States Court of Appeals for the Ninth Circuit.

IV. Assignments of Error.

The petitioner assigns as error the following acts

and omissions of The Tax Court of the United States:

(1) The ruling that the completed gift did not occur in 1943 is contrary to the evidence.

(2) The ruling that the completed gift occurred in 1946 is contrary to the evidence.

(3) With no conflicting evidence, finding facts contrary to the evidence presented.

(4) Disregarding the order of the Superior Court in and for the County of San Francisco, California.

(5) Failing to recognize the substance, rather than the form, of a transaction.

(6) The finding of deficiency of gift tax for the year 1946.

(7) The finding that Richard S. Goldman declared himself trustee.

(8) Failing to find taxpayer on January 1, 1943 declared Richard S. Goldman trustee of irrevocable trust.

(9) Failing to find that taxpayer had no donative intent in 1946.

(10) Holding that the trust became irrevocable upon appointment of guardian.

MARTIN GANG and
NORMAN R. TYRE
LOUIS M. BROWN

/s/ By LOUIS M. BROWN,
Counsel for Petitioner.

Duly Verified.

[Endorsed]: T.C.U.S. Filed August 10, 1953.

Before the Tax Court of the United States

Docket No. 29650

In the Matter of: LOIS J. NEWMAN,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

TRANSCRIPT OF PROCEEDINGS

Court Room 421, U. S. Appraisers Building, San
Francisco, California, Friday, November 2, 1951.

(Met, pursuant to notice, at 2:00 p.m.)

Before: Hon. Ernest H. Van Fossan, Judge.

Appearances: Samuel Taylor, Esq., and Walter
G. Schwartz, Esq., 1211 Balfour Building, San
Francisco, California, appearing on behalf of Peti-
tioner. Edward H. Boyle, Esq., (Hon. Charles Oli-
phant, Chief Counsel, Bureau of Internal Revenue)
appearing on behalf of Respondent. [1*].

The Clerk: Docket No. 29650, Lois J. Newman.

Mr. Taylor: Samuel Taylor and Walter G.
Schwartz, ready for the Petitioner.

Mr. Boyle: Edward H. Boyle, for the Respond-
ent.

The Court: Will you state the issues for the
Petitioner.

* Page numbering appearing at top of page of original Re-
porter's Transcript.

Mr. Taylor: This case involves a gift tax. The Commissioner has determined a deficiency in the gift tax for the calendar year 1946, of \$71,195.99.

The taxpayer claims that no gift was made in 1946, and that no amount of gift tax is due. The issue is whether or not the taxpayer made an irrevocable gift to her daughter in trust in 1943, or whether the trust created in 1943 was a revocable trust which became irrevocable when the corpus thereof was distributed to the guardian of the estate of the donee, a minor, in 1946.

The year before this Court in this case is the year 1946. The taxpayer contends that she made an irrevocable gift in 1943, and hence that there was no gift in 1946. The stipulation of facts which is being filed in this case shows that she filed Federal and State of California gift tax returns for the year 1943, disclosing that the gift was an irrevocable gift. The gift was one in trust. In 1946 the trust terminated.

Both oral and stipulated evidence will be introduced [3] and will show that the taxpayer had an only child, a daughter, who was eight years old in 1943. The taxpayer was a woman who had her ups and downs in life. She had had financial difficulty, and she knew what it was to need money. Her parents had died in 1935 and had left her some shares of stock in a California corporation that operated a brewery in San Diego, the Aztec Brewing Company. This stock, at the time her parents died and for some years thereafter, did not have much value, but after Pearl Harbor, with the airplane construc-

tion work which came to the San Diego area, the brewery became very prosperous and the stock became very valuable.

With the thought of protecting her only child in all events, the taxpayer in January, 1943 decided to make an irrevocable gift in trust of some 800 shares of the stock of the Aztec Brewing Company for her daughter. She transferred this stock to Richard S. Goldman, her attorney, and he orally declared himself trustee of an irrevocable trust for the Petitioner's daughter.

Some six or seven months later he declared himself as trustee in writing. This written declaration of trust is Exhibit 2-B to the stipulation of facts. It purports to be dated January 1, 1943, but the evidence will show that it was not executed until six or seven months after that date.

The controversy in this case centers around California Civil Code, Section 2280, which provides in part: [4] "Unless expressly made irrevocable by the instrument creating the trust, every voluntary trust shall be revocable by the trustor by writing filed with the trustee."

The attorney, Mr. Goldman, in executing the written declaration of trust, did not use the word "irrevocable." He used neither the word "revocable" nor the word "irrevocable."

However, he provided—and since this comes to the guts of the case, your Honor, and I would like to make a rather full opening statement so that as you hear the testimony you may more fully appreciate the issue—in this written declaration of trust,

Exhibit 2-B—and this trust was signed by him—this is a trust in which the trustee declared himself trustee, rather than a trust where the trustor by the terms of the trust transfers property to the trustee.

Mr. Goldman, in declaring himself trustee, stated that he agreed to transfer and deliver to the duly appointed guardian of the estate of Lois E. Senderman, the minor, the corpus and accumulated income of the trust estate; and in the event that no guardian was appointed that he would deliver this property to the minor when she reached twenty-one, and if she died before twenty-one that he would deliver the property to her executor or administrator.

The trust further provided that the trustee could resign and discharge himself of the trust by having the property transferred into the name of the duly appointed guardian of [5] the minor.

It further provided—and this provision is more important, because this is what actually happened—that in the event of the death of the trustee while this trust was in force and effect, his executors were authorized and directed to immediately apply to a court of competent jurisdiction—that is, to the State Courts of California—to deliver to the duly appointed guardian of the minor the property held in trust.

The trust had one final provision, which is of great importance. It provided that the obligation of the trustee would simply be to hold the property, and upon the termination of his liability as trustee, the trustee should before transferring the

property reimburse himself for any costs or expenses or charges incurred by him.

It then provided: "Upon the complete payment of all obligations, any balance remaining in the hands of the trustees shall be paid and delivered to said Lois E. Senderman, a minor, or if she has arrived at the age of majority, then to said Lois E. Senderman."

In other words, the trust provided that if anything happened to the trustee, either through the action of the trustee or otherwise, all the property should go automatically to the minor, who was the beneficiary of the trust.

Now, what actually happened was that in 1946 Mr. Goldman committed suicide, and the property was then [6] transferred, pursuant to court order to Clarissa Shortall, as the guardian of the estate of the minor.

The taxpayer contends that the provisions referred to in to the trust made it expressly irrevocable. The Commissioner must in this case contend that the trust is not an irrevocable trust, because the word "irrevocable" is not used therein. The Commissioner must contend that the word "irrevocable" is a word of art and that unless—

The Court: Do you know that he is contending these things?

Mr. Taylor: Do I know?

The Court: Yes. He will state his position.

Mr. Taylor: Perhaps I am stating my position in the terms of meeting his contentions. Of course, I have no power or no intention to foreclose Mr.

Boyle from making such arguments as he wishes.

The Court: We do not wish any argument at this time, just a statement of how the issue arises.

Mr. Taylor: Very well.

The question, then, is whether or not the trust can be expressly irrevocable where the word "irrevocable" is not used therein. We contend that the language which I have called to your attention makes the trust expressly irrevocable, even though the word "irrevocable" is not used.

Our second contention is that the uncontradicted [7] evidence will show that an oral irrevocable trust was created shortly after January 1, 1943; and the testimony will show that this trust was unquestionably made irrevocable, so that even assuming that the word "irrevocable" in a written trust is an indispensable word to make the trust irrevocable, still there was an irrevocable oral trust in this case created in 1943, and the fact that when that trust was reduced to writing the word "irrevocable" was omitted, we contend is of no consequence.

Our third contention is that all question as to whether an irrevocable trust was created by the taxpayer in this case is settled by an adjudication on the point of the Courts of California. The evidence pertaining to that adjudication has been stipulated and will be found in the stipulation.

Finally, we contend that if this Court should determine that there was a transfer of property by gift or for less than an adequate and full consideration in money or money's worth during 1946, then such transfer was effected by a Court decree,

and such transfer, under the doctrine of the United States Supreme Court in *Harris vs. Commissioner*, 340 U.S. 106, was not subject to gift tax.

That sums up the issues in this case, your Honor.

The Court: Mr. Boyle, will you state your position?

Mr. Boyle: If your Honor please, a trust was [8] created in 1943 and the Petitioner made a transfer to the trust and filed a gift tax return in the amount of \$30,000. The value of the gift stated was \$30,000, so there was no liability.

The Respondent takes the position that that trust created in 1943 was revocable. Under the California Civil Code quoted, unless a specific provision is made that the trust is irrevocable, it is revocable.

The Commissioner takes the position that being revocable, the transfer constituting the corpus was not a completed gift, and that consequently no gift tax liability could lie in the year 1943.

In 1946, the Commissioner asserts gift tax liability on the ground that trust was dissolved and the corpus transferred to a guardian of the beneficiary, at which time all title and interest that the trustor might have had by reason of having the power to revoke, passed out of her, and the title then went into the beneficiary. The Commissioner takes the point of view that that is the year in which the gift tax liability lies.

Of course, in the intervening years the beneficiary and the trust paid income tax liability on the earnings of the corpus; and the Commissioner in another action, which is docketed but which is not on this

calendar, is asserting income tax liability on the trustor for those years. [9]

In the year 1946 these State Court actions referred to in the Petitioner's opening argument are deemed to be consent decrees, and the evidence will show that. Therefore, they are not binding on this Court.

The corpus of the trust in 1946, which passed to the beneficiary, was composed of three items: cash, securities and eight per cent interest in a business. There is no controversy as to those values.

On the third item which makes up this corpus, there is some controversy. That involves the income tax returns, or the income tax payments, made by the beneficiary for 1943 and '44, and by the trustee in '45. Respondent's position is that if this Court holds that the gift was made in 1946, those taxes were erroneously paid and that money would have been in the corpus in 1946 if they had not been erroneously paid; and also that that money will come back by way of refund to the trust and to the beneficiary, and since the trust has been dissolved and the title of the corpus passed on to the beneficiary, it will go to the beneficiary, so it is an additional part of the gift.

The Petitioner has amended his opening petition. He hasn't submitted it yet, but he will, and in the amended petition he mentions this approach of the Harris Decision. We have an answer to that amended petition, but we won't show anything on that approach because we will answer it in brief.

This is actually the third or fourth amendment

and we are not sure—not filed with the Court, you understand, there is just going to be one amended petition filed, but he has changed it several times, and we are not sure what the approach is going to be, so we will answer that on brief. Of course, we will ask for alternative briefs so that we will know what his approach is going to be under the Harris Decision.

That is Respondent's position.

The Court: Do you have a stipulation of part of the case?

Mr. Taylor: Yes.

First, your Honor, I would like to file the original and four copies of an amended petition. A copy of this has been made available to the Respondent, and I understand that he has no objection to us filing it.

Is that correct?

Mr. Boyle: That is correct. And I ask leave to file an answer.

The Court: The amended petition and the answer may be filed.

Mr. Taylor: I would like now to file with the Court the original and a copy of a stipulation of facts. And for the record I would like to state that there is one set of exhibits to this stipulation, which is attached to the original [11] stipulation. The copy of the stipulation has no exhibits.

The Court: What are the numbers?

Mr. Taylor: They are joint exhibits and they range from Exhibit 1-A to Exhibit 12-L, inclusive.

The Court: The stipulation of facts will be received.

Mr. Boyle: If your Honor please, the Respondent objects to Paragraphs 7 and 8, as being irrelevant and immaterial in that stipulation. We have agreed to its introduction, but not as to Paragraphs 7 and 8.

(The documents above referred to were marked Joint Exhibits 1-A through 12-L, inclusive, and received in evidence.)

[Joint Exhibits 1-A through 12-L are attached to the Stipulation of Facts, pages 35-92 inclusive of this printed record.]

The Court: Call your witness.

Whereupon,

LOIS J. NEWMAN

was called as a witness by and on behalf of the Petitioner, and having been first duly sworn, testified as follows:

The Clerk: Will you state your name for the record, please?

The Witness: Lois J. Newman.

Direct Examination

Q. (By Mr. Taylor): You have a daughter by the name of Lois E. Senderman, Mrs. Newman?

A. Yes, I do. [12]

Q. Mr. Senderman was the name of your first husband, who is the father of this child?

(Testimony of Lois J. Newman.)

A. That is right.

Q. Was Richard S. Goldman your attorney?

A. Yes, he was.

Q. Over what period?

A. I would say ten or eleven years, between about 1935 until his death in '46.

Q. He committed suicide in 1946?

A. That is right, he did.

Q. Did you create a trust for your child, of which Mr. Goldman was trustee?

A. Yes, I did.

Q. Will you state the circumstances under which that trust was created?

A. It was created because in several periods of my life at that time I had had quite a bit of money, and unfortunately I had dissipated a good deal of it. And during my parents' lifetime I leaned very heavily upon my father. At the time of his death he left a considerable amount of debts, and the only asset he had was stock in the Aztec Brewing Company in San Diego, which at that time was practically worthless.

A time in 1942 came around, when due to the War the situation of the brewery in San Diego changed and things were going pretty well with the brewery, and the stock began to [13] increase in value—in fact, so much so that by the end of 1942 I was able to pay off all my debts and have a little money for the first time in several years.

Also because of the things that had happened—

(Testimony of Lois J. Newman.)

I had been married to a man who was financially irresponsible——

Q. That is Mr. Senderman?

A. That is right, the father of my daughter.

I thought that at this time I should make some provision so that in case I should remarry, or in case of my death also, to provide for the child's future in case of my death. I was very anxious that if my child was lucky enough to inherit any money from me that my former husband and her father should have no control over the money, because I considered him incapable of handling it. He had gone through a great deal of money of mine, left from my mother, not through any wish of his, but just through being incapable of handling money.

Also, I myself had been very foolish in spending and dissipating a good deal of money, and I felt that this was the last money I might ever have. So as I became solvent I spoke to Mr. Goldman, and told him that I would like to provide for Lois, my child.

He told me that he thought this was a good idea, and I discussed with him at length about how much we should give my daughter.

At the time I had this stock, but actually very [14] little money, and we came to the conclusion that I could give her about 800 shares of the brewery stock—the value was about \$30,000—and that I would incur no cash outlay or no further responsibility—I mean to pay any more money.

I did this because I wanted to feel that if I was

(Testimony of Lois J. Newman.)

foolish, or remarried, that the child would be provided for. I wanted to see that she would attain maturity and have enough to be educated and have a little money to go on. I didn't think at that time—I don't think anybody did—that the stock would become as valuable as it did. I don't think anybody foresaw that. If I had known that I wouldn't have been so anxious to provide for her future, but I wanted to see that she did have something.

Mr. Goldman explained to me at great length, and wanted me to consider that if this irrevocable trust was created that no matter what I did, or no matter what happened to me, that money would be gone, that I could never have any access to this money, that it would be out of my reach forever, that the money would belong to my child and I would not be able to get it.

I told him yes, that I knew this, and that is what I really wanted, that I was very anxious that she should be provided for, that I felt very responsible, and I also felt that her father would never be able to do anything for her.

He continued to impress upon me the fact: [15] "Remember, once this is done, no matter what happens, no matter if you need the money or not, you will not be able to touch this money."

I told him yes, I wanted the trust made.

He said, "I want you to think about it. Think it over very carefully."

Q. When did all of this take place?

A. In December.

(Testimony of Lois J. Newman.)

Q. December when?

A. The end of 1942, the end of the year. It was at this time I had just come out of my financial difficulty. At the end of 1942 the brewery had made enough money so that I could pay off what I owed.

Q. I mean, this conversation that you repeated with Mr. Goldman took place in December of 1942?

A. That is right. He said, "I want you to think it over."

In January of 1943 I came to Mr. Goldman's office again and told him that I had thought it over very carefully, that I was leaving for Santa Barbara in a few weeks and I wanted the trust made for my daughter, the irrevocable trust, I wanted it fixed so that no matter what happened nobody could touch the child's money, myself included—nobody.

I was very firm that I wanted it absolutely irrevocable. I didn't want anybody able to touch the child's money, [16] myself included—particularly myself, I guess. When I was so emphatic, Mr. Goldman said, "All right, I think you have thought it over. You know what you are doing. The trust stands as of today. From today on I will be the trustee."

I left the office at that time, and he told me that he would have the proper documents drawn up, that there would be documents, and so forth. But at that time he was very busy. It was right around the holidays. And he said he would prepare the document for me later.

Q. When did your father die?

(Testimony of Lois J. Newman.)

A. 1935—June of 1935.

Q. And you inherited the stock from the estate of your father?

A. My father and my mother passed away a few months before—from both of them.

Q. Your mother died in September of '35?

A. That is right.

Q. About how many shares were there?

A. It was about a quarter interest. It was almost 2,500 shares—2,400, I guess, 2,390 and a fraction.

Q. Did you expect to remarry at the time that you made this gift?

A. I was contemplating remarrying.

Q. And at the time you had these conversations with Mr. Goldman which you state created an irrevocable trust, you had transferred the stock, the 800 shares, to Mr. Goldman's name, [17] transferred the stock, the 800 shares, to Mr. Goldman's name, had you? A. Yes.

Q. So that the stock was in his name as trustee?

A. Yes.

Mr. Boyle: He is leading, your Honor; better let the witness answer.

The Court: Your questions are very leading.

The Witness: I will say that the stock never came into my name, that all stock I received went directly into Mr. Goldman's hands. I didn't receive it myself.

As the debts were paid off—

The Court: There is no question.

(Testimony of Lois J. Newman.)

Q. (By Mr. Taylor): At the time of these conversations with Mr. Goldman—just when did these conversations take place?

The Court: I did not understand your question.

Mr. Taylor: I think it was confusing, your Honor. I shifted my question.

Let me restate that question.

Q. (By Mr. Taylor): These conversations with Mr. Goldman when the irrevocable trust was created, when did they take place?

A. Early in January of 1943.

Q. And did he agree immediately to become trustee? [18]

A. He agreed immediately as of that discussion.

Q. When were you divorced, Mrs. Newman?

A. In 1940.

Q. Did her father ever support your child?

A. Never contributed to her support.

Q. Paragraph IV of the stipulation of facts, Mrs. Newman, reads: "On or about January 1, 1943, Richard S. Goldman acquired, as trustee, 800 shares of stock in said Aztec Brewing Company in trust for Petitioner's daughter, Lois E. Senderman."

Are those 800 shares referred to in Paragraph IV the 800 shares which you caused to be transferred to Mr. Goldman? A. Yes.

Q. Had you ever lost money gambling?

A. Yes.

Q. Was that a factor in the creation of your trust?

(Testimony of Lois J. Newman.)

A. Yes, because in different periods of affluence, let's say, I had lost too much money.

Q. How did that affect your creating a trust for your daughter?

A. Well, I didn't want to—as I said before, I figured that this stock in the Aztec Brewing Company was the last money that I was ever going to have, and I wanted to put some aside for her to provide for her future.

My whole idea was to see that the trust would be [19] irrevocable, so in case I did go off on a tangent that I wouldn't be able to spend her money, or money that I wanted to be hers.

Q. Do you recall whether after the conversation with Mr. Goldman in January of 1943, at which you state that the oral irrevocable trust was created—

Mr. Boyle: Your Honor, Respondent objects to any assumption in the questioning as to an oral trust.

Mr. Taylor: I haven't asked my question yet, Mr. Boyle. You interrupted me in the middle of it.

The Court: Address the Court, not counsel, Mr. Taylor.

Mr. Taylor: I beg your pardon, your Honor.

The Court: We will hear the question, first.

Q. (By Mr. Taylor): Do you recall whether at the conversation with Mr. Goldman in January of 1943, at which you have stated the oral irrevocable trust was created—whether at that time anything was said about reducing the trust to writing?

A. Yes, I do.

(Testimony of Lois J. Newman.)

Mr. Boyle: Your Honor, Respondent objects to the question as to an oral trust. The gift tax in this case is based upon the written trust, and any mention of an oral trust is deemed immaterial and irrelevant.

The Court: It may be or may not be. Objection is [20] overruled.

Mr. Taylor: Would you please read the question to the witness, Mr. Reporter?

(Record read.)

Q. (By Mr. Taylor): Will you state please what was said in that regard?

A. To the best of my recollection, Mr. Goldman said the oral irrevocable trust would stand as of that moment. At a future date he said there were many documents to be prepared, and that he would prepare these documents for me based on the information that I had given him that day, what he wanted, that he would prepare the documents and I should sign them.

Q. Now, I will ask you to state, if you know, when the written trust was actually executed. I show you in this regard Exhibit 2-B to the stipulation of facts, which is a declaration of trust by Richard S. Goldman, as trustee. And I call to your attention that it is dated: "In Witness Whereof, I have hereunto set my hand this first day of January, 1943. Richard S. Goldman, as Trustee."

And you had purported to acknowledge receipt of the instrument also on the date, January 1, 1943.

(Testimony of Lois J. Newman.)

Now, I ask you to state, if you know, when that document, Exhibit 2-B, was actually executed.

A. It was actually executed six or seven months later, either in June or July of 1943. [21]

Q. By the way, were you in Mr. Goldman's office on January 1, 1943, New Year's day?

A. I was not.

Q. Did you read the written trust, Exhibit 2-B, when Mr. Goldman submitted it to you?

A. I looked at it, but I didn't read it carefully, because I asked Mr. Goldman if he would explain it to me and tell me about it, and he told me that it was the identical irrevocable trust that we had agreed upon early that year. And I trusted Mr. Goldman implicitly, and I signed it.

Q. You believed that you were signing a trust that was an irrevocable trust? A. I did.

Q. Mrs. Newman, I again show you Exhibit 2-B, the declaration of trust, and call to your attention the fact that this refers to Mr. Goldman having in his possession certificates for 2,396 $\frac{7}{8}$ shares of stock of Aztec Brewing Company, and that he states that he holds all of these certificates of stock, all of these shares of stock, as trustee, and that the owners of said stock are Lois J. Senderman—that is you, isn't it? A. Right.

Q. (Continuing): —as owner of 1,596 $\frac{7}{8}$ shares, and Lois E. Senderman, a minor, daughter of Lois J. Senderman, as owner of 800 shares. [22]

A. That is correct.

Q. Then the balance of the trust proceeds to

(Testimony of Lois J. Newman.)

refer to the 800 shares? A. Yes.

Q. Can you explain the reference in Exhibit 2-B, "The trust to be 1,596 $\frac{7}{8}$ shares"?

A. Yes, that was the balance of the stock that I received, and I made a revocable trust for myself at this time with Mr. Goldman, and I was very careful in perusing this trust, because in case I did want some money I wanted to be able to collect that from Mr. Goldman when I cared to. I didn't want that trust irrevocable. My daughter's I wanted irrevocable and mine, revocable.

Q. Who was to receive the income of the 1,596 $\frac{7}{8}$ shares? A. I was.

Q. Did you create that trust at the same time that you created the trust for your daughter?

A. I think so.

Mr. Boyle: Your Honor, in order that the record may show the Respondent objects to this whole line of questioning on the oral trust, for the reason that the written trust is the best evidence.

Under the parol evidence rule the written trust speaks for itself and the witness cannot add thereto.

The Court: One of the issues stated in the petition deals with this oral trust. The Petitioner has a right to make his own presentation of proof, the same as you have in behalf of the government. This is in line with his theory of proof. We will hear the evidence.

Q. (By Mr. Taylor): Was the trust for you created at the same time that the trust for your daughter of 800 shares was created?

(Testimony of Lois J. Newman.)

A. As I recall, yes.

Q. Was the trust for you an oral trust or a written trust?

A. It was oral until a later date.

Q. Now, what happened to the 1,596 $\frac{7}{8}$ shares which you transferred to Mr. Goldman under a revocable arrangement in trust for yourself?

A. He held them in trust for me until his death, paying me the income after expenses.

Mr. Boyle: Your Honor, this other trust is entirely irrelevant to the case—this other trust involving the 1,500 shares. There is nothing so far as our particular issues are that are concerned with it. It doesn't do any damage, but it is not material.

The Court: Are you advising me or are you making a motion?

Mr. Boyle: Respondent objects to it, of course.

The Court: Objection overruled.

Mr. Taylor: Would you read the question, please, Mr. Reporter?

(Record read.)

Q. (By Mr. Taylor): What happened following his death?

A. They were delivered to me personally.

Q. You mean the property which had been acquired, to wit, the 1,596 $\frac{7}{8}$ shares, was returned to you?

A. Yes.

Q. You revoked the trust, in other words?

A. I did.

Q. Were any Federal or State gift tax returns ever filed in connection with the trust of 1,596 $\frac{7}{8}$

(Testimony of Lois J. Newman.)

shares which you created for yourself as beneficiary?

A. No, because as I understood it there was no gift, it was mine.

Q. The revocable trust, you mean?

A. Yes.

Q. Paragraph III of the stipulation of facts states that for a number of years prior to January 1, 1943, you owned as your separate property $2,396\frac{7}{8}$ shares of stock of Aztec Brewing Company and that these represented approximately one-fourth of the issues, the outstanding stock of the corporation. A. That is true. [25]

Q. Now, Exhibit 3-C to the stipulation of facts, the certificate of limited partnership, on Page 3 refers to Richard S. Goldman, trustee for Lois J. Senderman, limited partner, as holding 17 per cent limited partnership interest. Now, Lois J. Senderman, that is you? A. Yes.

Q. And also it refers to Richard S. Goldman, trustee for Lois E. Senderman, limited partner—and that is your daughter?

A. That is right.

Q. (Continuing): —as holding an 8 per cent interest as limited partner.

A. That is true.

Q. Now the stipulation will show—and I think the record will show—that in order for you to have a 17 per cent interest as a limited partner you must have owned 1,700 shares of stock; or, in other

(Testimony of Lois J. Newman.)

words, you must have acquired $103\frac{1}{8}$ additional shares of stock in addition to the $1,596\frac{7}{8}$ shares which you owned after the creation of the irrevocable trust for your daughter.

Now, simply to clear the record, I would like to ask you—this is my only point here, Mr. Boyle—where the other $103\frac{1}{8}$ shares came from?

A. I purchased them in 1944.

Q. So you did not own them at the time of the trust [26] for your daughter, but you acquired them subsequently?

A. That is true.

Q. And after you purchased them you added them to the revocable trust for yourself?

A. That is true.

Mr. Taylor: Your witness, Mr. Boyle.

Cross Examination

Q. (By Mr. Boyle): Mrs. Newman, why was the written trust pre-dated some six months prior to what you say was the actual execution of it?

Mr. Taylor: I object to the question. It doesn't appear in the evidence.

The Court: When you are addressing the Court, rise.

Mr. Taylor: I beg your pardon, your Honor. It doesn't appear that the witness knows why.

The Court: What is your objection to the question?

Mr. Taylor: There is nothing in the evidence to show that the witness knows why it was pre-dated.

Mr. Boyle: That is my question, your Honor.

(Testimony of Lois J. Newman.)

The Court: Will you read the question, Mr. Reporter.

(Record read.)

The Court: She may answer, if she knows. [27]

A. I actually don't know.

Q. (By Mr. Boyle): Did you read the written declaration of trust when it was executed?

A. To a certain extent.

Q. And you verified it?

A. I could tell you why I assume it.

Q. Why was the alleged oral trust created as an oral trust in January?

A. Because at that time I was leaving for Santa Barbara in a few weeks. Mr. Goldman was very busy at the time. He assured me before I left for Santa Barbara that the irrevocable oral trust was in force, that I had nothing to worry about.

I went to Santa Barbara to enter a hospital and I wanted to be sure that things were in order. But he had been very busy——

Q. When was this oral trust to end?

A. As far as I know, when my daughter attained her majority.

Q. Where were you when you had this conversation? A. In Mr. Goldman's office.

Q. Who else was present?

A. I am not quite sure. Many times that we discussed things there were people in and out. Mr. Goldman's office force was in and out at many meetings. I couldn't tell you at [28] what particular time they were in the room or not.

(Testimony of Lois J. Newman.)

Q. What did the oral trust provide as to the income on the corpus?

A. Mr. Goldman was going to hold it for my daughter's benefit at that time.

Q. Was your daughter living with you in 1943?

A. Yes. She was in boarding school, but she was living with me. I had full custody.

Q. Was she living with you in '44, '45 and '46?

A. She was still at school.

Q. Did you consider the income on the trust sufficient to maintain her?

A. At the time it was created I didn't know what it would be.

Q. Did you consider that the income was sufficient in 1945 to support her?

A. I would say that it was more than enough to support her.

Q. Did you claim your daughter as an exemption, as a dependent in your income tax returns in 1943, '45, '46 and '47?

A. I don't think so, but I don't know.

Q. I have here a copy of the original petition filed in this case, dated July 24, 1950, verified by you, Mrs. Newman. In Paragraph 4 on Page 4 you state that through inadvertence and mistake—— [29]

Mr. Taylor: If the Court please, that petition was filed by me as attorney, and it is in the record in this case. I do not see the materiality, and hence I object.

(Testimony of Lois J. Newman.)

The Court: I will hear what he has to say.
Proceed.

Q. (By Mr. Boyle): You state, "Through the inadvertence and mistake of said trustee, said written declaration did not include an expressed provision that said trust was irrevocable."

Did you believe in July of 1950 that when the so-called oral trust was reduced to writing that there had been a mistake made in failing to state specifically as to revocability?

A. I certainly did.

Q. In the amended petition which has been filed today, and which you also verified on Page 4, Paragraph 3, no mention is made that a mistake had been made, but the language is, "said written declaration construed as a whole is clearly intended and designation by its terms as irrevocable and as effecting an irrevocable and complete gift."

A. May I answer in my own words?

Q. There is no question asked you yet.

A. I am sorry.

Q. Do you believe today that a mistake was made back in 1943 at the time the alleged oral trust was reduced to writing in that through error no specific mention was made as to irrevocability?

A. May I answer in my own words?

The Court: Certainly.

The Witness: The whole point of the trust was so that I could not touch it. I wouldn't have created the trust unless it was irrevocable.

Q. (By Mr. Boyle): The question is, do you

(Testimony of Lois J. Newman.)

believe today that a mistake was made in 1943, at the time the alleged oral trust was reduced to writing? A. I do.

Q. I have here in my hand a copy of a stipulation, Exhibit 11-K of the stipulation of facts, which is an order by the Superior Court of the State of California, in and for the City and County of San Francisco, stating that on the 10th day of July, 1947, you attended a hearing——

Mr. Taylor: What page is this, Mr. Boyle?

Mr. Boyle: It is Exhibit 11-K.

Mr. Taylor: What page?

Mr. Boyle: The first page.

Q. (Continuing): Do you recall attending that hearing? A. Yes, I do.

Q. Who else was present at the hearing?

A. Mr. Taylor, my attorney, Mr. Levinson, and Miss Shortall—and of course the Judge.

Q. Did you contest that proceeding? [31]

A. I don't understand exactly what you mean.

Q. The hearing was on a petition by the guardian requesting that the trust be declared irrevocable ab initio—back to the beginning of the trust. What was your position as to whether the trust should or should not be declared irrevocable?

Mr. Taylor: If the Court please, I object to the question as immaterial, irrelevant and incompetent, and not within the scope of the direct examination.

The Court: I will sustain the objection.

Mr. Boyle: Your Honor, obviously all these Su-

(Testimony of Lois J. Newman.)

perior Court petitions and orders have been introduced to foreclose this Court from passing upon the question of revocability here, because this—

The Court: I don't understand that.

Mr. Boyle: It is the Respondent's position that it was purely a consent decree, without any formal or real contest.

The Court: You are cross examining this witness at the present time. This is not your witness, unless you wish to make her your witness. There was no testimony on the direct about this matter.

Mr. Taylor: Furthermore, your Honor, these exhibits—

The Court: Just a moment. [32]

Mr. Boyle: Respondent wishes to introduce in evidence at this time the personal income tax returns of the witness for the calendar years '43, '45, '46 and '47, and requests leave that they be withdrawn and photostatic copies be substituted.

The Court: You have no objection?

Mr. Taylor: I have no objection at all to that.

The Court: Exhibits M, N, O, and P.

Mr. Taylor: But I would like to look at them, if you plan to use them as a basis of examination.

(The documents above referred to were marked Respondent's Exhibit Nos. M, N, O and P and were received in evidence.)

Mr. Taylor: Where is 1944, Mr. Boyle?

Mr. Boyle: We are not introducing 1944.

Mr. Taylor: I would then like to have you

(Testimony of Lois J. Newman.)

make 1944 available to me, and I would also like to have you make the returns of the trust and of the guardianship available to me, and of the minor, so that I may introduce them if I desire to do so. Just to introduce the returns of Mrs. Newman, that gives just a partial picture.

This comes as a surprise to me, so I have not requested these of you heretofore.

Mr. Boyle: Your Honor, of course the Respondent wanted these cases to be consolidated, and in fact this particular gift tax case was continued over one calendar so they [33] could be consolidated, but at the instance of the Petitioner they have not been consolidated at this time. Those would have been introduced, of course.

Mr. Taylor: Mr. Boyle, I have no objection to the introduction of the returns. I don't see their materiality, but I am very happy to introduce them if you want to introduce them.

The Court: They have been received in evidence. Anything you want to submit, you can take proper steps to procure it. There is no obligation on the Government to introduce any evidence that you may speak of.

Mr. Taylor: Your Honor, I would then like to have an agreement with Mr. Boyle that he will make available to me for introduction the returns of the trust, the minor and the guardianship and also the return for 1944.

The Court: That is something you can take up later. You may proceed.

(Testimony of Lois J. Newman.)

Mr. Taylor: And then one other thing——

The Court: Just a minute. Mr. Boyle has the floor, so to speak, and he has just introduced these returns. Proceed.

Q. (By Mr. Boyle): Mrs. Newman, what were the provisions of the oral trust with respect to the rights of the trustee, the powers of the trustee to resign and discharge himself? [34]

A. Will you explain a little more fully, please?

Q. Yes. What was the nature of the trustee's right to resign and discharge himself of the duties of the oral trust?

A. I think that if he resigned he was to appoint, or have appointed by the court, another trustee until my daughter assumed her majority—or should I say another guardian? It is a little technical for me.

Q. Who was present when the oral trust was discussed.

A. I think I told you that I was not certain, that many people in Mr. Goldman's office came back and forth out of the room. When I discussed my daughter's affairs with Mr. Goldman usually someone from the office was present. When we discussed my personal affairs there wasn't. So I don't actually know.

Q. Mr. Goldman was an attorney?

A. Right.

Q. Did Mr. Goldman suggest that this trust be oral in nature? A. No, he did not.

Q. Did you suggest that it be oral?

(Testimony of Lois J. Newman.)

A. I don't know anything about trusts. If I did I would have insisted that the word "irrevocable" be written in.

Q. Upon whose instance was the so-called oral trust reduced to writing? [35]

A. I think I have explained, the oral trust was created because Mr. Goldman was very busy at the time, and I wanted it to go into effect immediately. I had full and explicit confidence in Mr. Goldman. He handled all of my affairs for me, with no bounds, no anything. I took his word.

Mr. Boyle: That is all, your Honor.

The Court: Do you have any other questions of this witness?

Mr. Taylor: Yes, I have a couple.

The Court: Proceed.

Redirect Examination

Q. (By Mr. Taylor): Was Miss Shortall present at the time of the conference at which the oral trust was created?

A. She might have been.

The Court: Have you any other questions?

Mr. Taylor: I have one more, your Honor.

The Court: Let us hear it.

Mr. Taylor: No, I have no more questions of this witness.

The Court: You are excused.

(Witness excused.)

Mr. Taylor: If the Court please, I find from an examination of these returns that what we have

here is not simply the return, but a great many things which have nothing to [36] do with the return, such as protests, for example, and other material.

I would suggest that it might save time if I could have a few minutes to look these over, and Mr. Boyle and I could doubtless agree.

The Court: We will take a brief recess.

(Short recess.)

The Court: You may proceed.

Mr. Taylor: I offer in evidence the income tax return for Lois J. Senderman for the calendar year 1944, and I ask leave for it to be withdrawn and photostat substituted therefor.

The Court: That may be done. Have you any objection?

Mr. Boyle: No objection, your Honor.

The Court: It may be received and marked Exhibit No. 13.

(The document above referred to was marked Petitioner's Exhibit No. 13 and received in evidence.)

File this return with Collector of Internal Revenue on or before March 15, 1945. Any balance of tax due (item 8, below) must be paid in full with return. See separate instructions for filling out return.

FORM 1040

U. S. INDIVIDUAL INCOME TAX RETURN FOR CALENDAR YEAR 1944

1944

226 DEPENDENT ADJUSTMENT
Excluded \$
Credited \$10,862.60
FICA 2223

EMPLOYERS—instead of this form, you may use your Withholding Receipt, Form W-2 (Rev.), or return, if your total income was less than \$3,000, consisting wholly of wages shown on Withholding Receipts or of such wages and not more than \$100 of other wages, dividends, and interest.
NAME Lois J. Senderman
(PLEASE PRINT. If this return is for a husband and wife, use both last names)
(formerly 975 Bush Street)
ADDRESS (new) c/o Richard S. Goldman, 1111 Mills Tower
(PLEASE PRINT Street and number or rural route)
San Francisco, Calif.
(City or town, postal zone number) (State)
Social Security No. (if any)

Do not write in these spaces
File No. 2627
Social Security No. 785551
City of Calif. Tower
JAN 15 1945
94 COLL. INT. REV.

1. List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of each wife (or husband). List names of other filers relative with 1944 income of less than \$500 who contributed more than one-half of their support from you. If this is a joint return of husband and wife, list dependent filers on the ACCOUNT OF THE U.S.

Your Name Lois J. Senderman
Relationship
NOV 2 - 1951
PETITIONER'S EXEMPT 13

2. Enter your total wages, salaries, bonuses, commissions, and other income from employers and from 1944 IRREGULAR PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reinstatement expenses, see instruction 2.

PRINT EMPLOYER'S NAME	WHERE EMPLOYED (CITY AND STATE)	AMOUNT
Aztec Brewing Co.	San Diego, Cal.	1800. 00

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation) Enter total here \$ 1800. 00

4. If you received any other income, give details on page 3 and enter the total here 112. 50

5. Add amounts in items 2, 3, and 4, and enter the total here \$ 17,944. 39

6. Add amounts in items 2, 3, and 4, and enter the total here \$ 19,856. 89

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 2. This table, which is provided by law, is based on the same tax rates as are used in the Tax Computation on page 4. The table automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 4.

IF YOUR INCOME WAS \$5,000 OR MORE.— disregard the tax table and compute your tax on page 4. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and use itemized deductions, the other must also itemize deductions.

6. Enter your tax from table on page 2, or from line 15, page 4 \$ 688. 94

7. How much have you paid on your 1944 income tax?

(A) By withholding from your wages (Attach Withholding Receipts, Forms W-2)	\$ 297. 60
(B) By payments on 1944 Declaration of Estimated Tax	17,447. 194
Enter total here \$	17,744. 794

8. If your tax (item 6) is larger than payments (item 7), enter BALANCE OF TAX DUE here

9. If your payments (item 7) are larger than your tax (item 6), enter the OVERPAYMENT here \$ 10,862. 60

Check () whether you want this overpayment: Refunded to you () or Credited on your 1945 estimated tax (X)

If you filed a return for a prior year, what was the latest year? 1943
To which Collector's office was it sent? 1st Dist. of Calif.
To which Collector's office did you pay amount claimed in item 7 (B), above? 1st Dist. of Calif.

If your wife (or husband) making a separate return for 1944
If "Yes," write below:
Name of wife (or husband)
Collector's office to which sent

I declare under the penalties of perjury that this return (including any accompanying schedule and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Captation of person (unless this taxpayer is agent) preparing return: Lois J. Senderman
Date: 1-15-45
(Signature of taxpayer)

(Name of firm or employer, if any) (If this is a joint return of husband and wife, it must be signed by both)

(SEE TAX TABLE BELOW)

Petitioner's Exhibit No. 13—(Continued)

* * * * *

SCHEDULE E.—Income From Partnerships, Estates and Trusts, and Other Sources:

1. Name and address of partnership, syndicate, etc.	
2. Name and address of estate or trust: Lois J. Senderman Trust (Aztec Brewing Company interest) (Fiduciary Return attached).....	\$19,347.64
3. Other Sources (see attached schedule)..	1,403.25
 Total.....	<hr/> \$17,944.39
 Total income from above sources (Enter as items 4, page 1)	<hr/> \$17,944.39

SCHEDULE E.—Other sources (state nature):

Face value of bonds	Date Acquired	Name of Bond	Cost including Commission	Call Price	Amor-tization
\$5000.00	9-13-44	Great Northern Ry Co. Gen Mtg. 4% Conv. Series "G"	\$5178.25	\$5050.00	\$128.25
\$5000.00	9-13-44	Nebraska Power Co. 1st Mtg. G.B. 4½% due 81	\$5412.50	\$5250.00	\$162.50
\$10000.00	9-14-44	Commonwealth Edison Co. 3½% conv. due 58	\$11,325.00	10,212.50	1112.50
 Total.....					<hr/> \$1,403.25

DEDUCTIONS

Contributions—See attached schedule.

Total Deductions.....	<hr/> \$1101.64
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Petitioner's Exhibit No. 13—(Continued)

DEDUCTIONS

Contributions:

Community Chest	\$ 50.00	
A. V. W. S.....	50.00	
American Red Cross.....	35.00	
Hadassa	5.00	
Tuberculosis	5.00	
S. F. Council of Jewish Women.....	5.00	
War Orphan Scholarship.....	10.00	\$ 160.00

Interest:

Merrill Lynch, Pierce, Fenner & Beane, interest paid upon purchase of bonds	\$ 175.47
--	-----------

Taxes:

Automobile licenses (2 cars).....	\$ 31.70	
State of Calif. 1943 tax.....	413.22	
State of Calif. Sales Tax 2½%.....	283.45	
Safe Deposit box.....	19.80	
State of Calif. Unemployment.....	18.00	\$ 766.17

Total.....\$1,101.64

TAX COMPUTATION—For Persons not using Tax Table on
page 2:

1. Enter amount shown in item 5, page 1. This is your
Adjusted Gross Income.....\$19,856.89
2. Enter Deductions (if deductions are itemized above,
enter the total of such deductions; if adjusted
gross income (line 1, above) is \$5,000.00 or more
and deductions are not itemized, enter the standard
deduction of \$500)..... 1,101.64
3. Subtract line 2 from line 1. Enter the difference
here. This is your Net Income.....\$18,755.25
4. Enter your Surtax Exemptions (\$500 for each per-
son listed in item 1, page 1)..... 500.00
5. Subtract line 4 from line 3. Enter the difference
here. This is your Surtax Net Income.....\$18,255.25

Petitioner's Exhibit No. 13—(Continued)

6. Use the Surtax Table in instruction sheet to figure your Surtax on amount entered on line 5. Enter the amount here.....	\$ 6,335.28
<hr/>	
7. Copy the figure you entered on line 3, above. (If line 3 includes partially tax-exempt interest, see Tax Computation Instructions)	\$18,755.25
8. Enter your Normal-Tax Exemption (\$500 if return includes income of only one person; otherwise see Tax Computation Instructions)	500.00
<hr/>	
9. Subtract line 8 from line 7, and enter the difference here	\$18,255.25
<hr/>	
10. Enter here 3 percent of line 9. This is your Normal Tax	\$ 547.66
<hr/>	
11. Add the figures on lines 6 and 10, and enter the total here. (If alternative tax computation is made on separate Schedule D, enter here tax from line 15 of Schedule D).....	\$ 6,882.94
<hr/>	
15. Subtract line 14 from line 11. Enter the difference here and in item 6, page 1. This is your tax.....	\$ 6,882.94

* * * * *

NOTICE OF INSTALLMENT DUE

Income and Victory Tax Estimated on Declaration for Current Taxable Year

Lois J. Senderman, 975 Bush St., San Francisco, Cal. 8304266

Under the Current Tax Payment Act, the total amount of the unpaid balance of your estimated tax for the current year, as entered hereon, will be due on the date indicated: Last Credit, 5815.98; Total Unpaid Balance, 5815.98.

This installment must be paid on or before Jan. 15, 1945.

If it is not paid on time, a penalty will be incurred.

To insure proper credit, please return this form with remittance to: 100 McAllister Street, San Francisco, California.

Collector's Paid Stamp: Received Jan. 15, 1945, Coll. Int. Rev. 1st Dist. Cal. 94.

Mr. Boyle: I introduce into evidence, your Honor, the income tax return of Lois E. Senderman, a minor, for 1943, 1946 and 1947, and also the fiduciary income tax of the trust of Lois E. Senderman, a minor, for the calendar year 1945, and request permission that they be withdrawn and photostat substituted. [37]

The Court: That may be done in all cases. Exhibits Q, R, S and T.

(The documents above referred to were marked Respondent's Exhibit Nos. Q, R, S, and T and received in evidence.)

Mr. Taylor: And I will offer into evidence the income tax return for Lois E. Senderman, a minor, for the year 1944, and ask leave for it to be withdrawn.

The Court: Leave is granted to substitute all these documents. Exhibit 14.

(The document above referred to was marked Petitioner's Exhibit No. 14 and received in evidence.)

FIELD

File this return with Collector of Internal Revenue on or before March 15, 1945. Any balance of tax due (item 8, below) must be paid in full with return. See separate instructions for filling out return.

FORM 1040
Treasury Department
Individual Income Tax Return

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1944

1944

or final year beginning 1944 and ending 1945

Do not write in these spaces

EMPLOYEES.—Instead of this form, you may use your Withholding Receipt, Form W-2 (Rev.), as your return, if your total income was less than \$3,000, consisting wholly of wages shown on Withholding Receipts or of such wages and not more than \$100 of other wages, dividends, and interest.

2627
1012556

NAME Lois E. Senderman, a Minor

c/o Richard S. Golden, 1111 Mills Tower,

ADDRESS (PLEASE PRINT) San Francisco, 4, Calif. Social Security No. (if any)

94 COL INT. REV DIST. CAL

1. List your own name, if married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list names of your wife (or husband). List names of other close relatives with 1944 income of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Your Exemptions	NAME (Please print)	Relationship	NAME (Print name of employer)	Relationship
1	Lois E. Senderman			

JUL 17 1946

2. Enter your total wages, salaries, honoraria, annuities, dividends, interest, and other income received in 1944, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of the Armed Forces or Merchant Marines in 1944, see instructions.

PRINT EMPLOYER'S NAME	AMOUNT
WITNESSERS	
DUMBY	

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation)

4. If you received any other income, give details on page 3 and enter the total here \$ 19,065. 04

5. Add amounts in items 2, 3, and 4, and enter the total here \$ 14,065. 04

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 2. This table, which is provided by law, is based on the same tax rates as we used in the Tax Computation on page 4. The table automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 4. IF YOUR INCOME WAS \$5,000 OR MORE.—Overprint the tax table and compute your tax on page 4. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage. HUSBAND AND WIFE.—If husband and wife file separate returns, and use itemized deductions, the other must also itemize deductions.

6. Enter your tax from table on page 2, or from line 15, page 4. \$ 677c. 42

7. How much have you paid on your 1944 income tax?
(A) By withholding from your wages (Attach Withholding Receipts, Form W-2). \$ 6013. 56
(B) By payments on 1944 Declaration of Estimated Tax \$ 6013. 56

8. If your tax (item 6) is larger than payments (item 7), enter BALANCE OF TAX DUE here \$ 762. 86

9. If your payments (item 7) are larger than your tax (item 6), enter the OVERPAYMENT here \$

Check () whether you want this overpayment: Refunded to you () or Credited on your 1945 estimated tax ()

If you filed a return for a prior year, what was the latest year? 1943
To which Collector's office was it sent? 1st Dist of Cal.
To which Collector's office did you pay amount claimed in item 7 (B), above? 1st Dist of Cal.

If your wife (or husband) making a separate return for 1944? If "Yes," write below: Name of wife (or husband) Collector's office to which sent

Under the penalty of perjury, this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief it is true, correct, and complete return.

Lois E. Senderman 11545
Richard S. Golden, Trustee
1-1-45
San Francisco, Calif.

SEE TAX TABLE BELOW

Petitioner's Exhibit No. 14—(Continued)

* * * * *

SCHEDULE E—Income from Partnerships, Estates and Trust, and Other Sources:

1. Name and address of partnership, syndicate, etc.
 2. Name and address of estate or trust:
 Lois E. Senderman, a Minor..... \$20,427.54
 (Fiduciary Return attached)
 3. Other sources (see attached schedule).. (1,362.50) _____
- Total.....\$19,065.04

Total income from above sources
 (Enter as item 4, page 1).....\$19,065.04

* * * * *

SCHEDULE E—Other Sources (state nature):

Face value of bonds	Date Acquired	Name of Bond	Cost including Commission	Call Price	Amor-tization
\$5000.00	9-19-44	Amer. Tel & Tel 3% due 56	\$6037.50	\$5200.00	\$837.50
\$5000.00	9-13-44	Nebraska Power Co. 1st Mtg. G.B. 4½% due 81	\$5412.50	\$5250.00	\$162.50
\$5000.00	9-13-44	Safe Harbor Water Power Corp. 4½% 1st Mtg. SFGB due 79	\$5512.50	\$5150.00	\$362.50
Total.....					\$1,362.50

* * * * *

TAX COMPUTATION—For Persons not using Tax Table on Page 2

1. Enter amount shown in item 5, page 1. This is your Adjusted Gross Income.....\$19,065.04
2. Enter Deductions (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000.00 or more and deductions are not itemized, enter the stand-ard deduction of \$500)..... 500.00

Petitioner's Exhibit No. 14—(Continued)

- | | |
|--|-------------|
| 3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income..... | \$18,565.04 |
| 4. Enter your Surtax Exemptions (\$500 for each person listed in item 1, page 1)..... | 500.00 |
| <hr/> | |
| 5. Subtract line 4 from line 3. Enter the difference here. This is your Surtax Net Income..... | \$18,065.04 |
| <hr/> | |
| 6. Use the Surtax Table in instruction sheet to figure your Surtax on amount entered on line 5. Enter the amount here | \$ 6,234.47 |
| <hr/> | |
| 7. Copy the figure you entered on line 3, above. (If line 3 includes partially tax-exempt interest, see Tax Computation Instructions) | \$18,565.04 |
| 8. Enter your Normal-Tax Exemption (\$500 if return includes income of only one person; otherwise see Tax Computation Instructions) | 500.00 |
| <hr/> | |
| 9. Subtract line 8 from line 7, and enter the difference here | \$18,065.04 |
| <hr/> | |
| 10. Enter here 3 percent of line 9. This is your Normal Tax | \$ 541.95 |
| <hr/> | |
| 11. Add the figures on lines 6 and 10, and enter the total here. (If alternative tax computation is made on separate Schedule D, enter here tax from line 15 of Schedule D)..... | \$ 6,776.42 |
| <hr/> | |
| * * * * * | |
| 15. Subtract line 14 from line 11. Enter the difference here and in item 6, page 1. This is your tax..... | \$ 6,776.42 |

Mr. Taylor: Mr. Boyle, with regard to the returns which you have introduced into evidence, will you make photostats available to me, please?

Mr. Boyle: That will be done.

The Court: Call your next witness.

Mr. Taylor: Miss Shortall, will you take the stand, please.

Whereupon,

CLARISSA SHORTALL

was called as a witness by and on behalf of the Petitioner, and having been first duly sworn, testified as follows:

The Clerk: Will you state your name, please.

The Witness: Clarissa Shortall. [38]

Direct Examination

Q. (By Mr. Taylor): You are the guardian of the estate of Lois E. Senderman, a minor?

A. Yes.

Q. You are an attorney? A. Yes.

Q. And a member of the State Bar of California? A. Yes.

Q. How long have you been a member of the California State Bar?

A. Since May of 1935.

Q. Were you ever associated with Richard S. Goldman as an attorney? A. Yes.

Q. How long were you so associated?

A. From the first of October 1942, until the time of his suicide, March 1, 1946.

Q. Did you work for Mr. Goldman in his office during all of that period? A. Yes.

Q. You were his right-hand man?

A. Yes, I was.

Q. Or woman, I should say. Did you work for

(Testimony of Clarissa Shortall.)

Mr. Goldman in matters pertaining to Mrs. Lois J. Senderman, now known as Mrs. Lois J. Newman, the Petitioner in this case? [39]

A. Yes, I did.

Q. When did you first begin to handle matters for Mrs. Newman?

A. As soon as I started to work with Mr. Goldman in 1942.

Q. Did you work closely with Mr. Goldman?

A. Yes, I did; I worked very closely with him. I was the only other attorney in the office, and was very familiar with all of the matters in the office, including Mrs. Newman's and her daughter.

Q. Will you state whether you were concerned with any matters for Mrs. Newman in late 1942 or in early 1943, and thereafter in 1943?

A. Yes, I was. Mrs. Newman was discussing the matter of a trust for her daughter, and Mr. Goldman discussed this matter with me and asked me to work on it with him.

Q. When was that?

A. That was in late '42 and in '43, continuing.

Q. By late '42, you mean December?

A. I would say December of '42, and then on into '43.

Q. Will you state, if you know, what was the outcome of the discussions with regard to a trust for her daughter.

A. Yes.

Q. That is, for Mrs. Newman's daughter?

A. Yes. In 1943, I would say the first week in [40] January, there was a meeting in Mr. Gold-

(Testimony of Clarissa Shortall.)

man's office with Mrs. Newman, Mr. Goldman and myself, at which time the matter of the trust was finally brought to a head, and Mrs. Newman stated that she wanted an irrevocable trust.

Q. She wanted what?

A. An irrevocable trust for her daughter. And Mr. Goldman consented to act as trustee, and reminded Mrs. Newman at that time that if she did create such a trust that she must realize that she could never get the property back in any way, and that she could never assume any control over it.

Q. Paragraph IV of the stipulation of facts states that on or about January 1, 1943, Richard S. Goldman acquired as trustee 800 shares of stock in Aztec Brewing Company, in trust for Petitioner's daughter, Lois E. Senderman. At the conclusion of the conversation that you referred to, had that stock been transferred to Mr. Goldman as trustee?

A. Yes, that was covered in the 1942 conversations. All of Mrs. Newman's inheritance from her father and mother, which was in the sum of 2,400 shares of stock in the Aztec Brewing Company were transferred into Mr. Goldman's name as trustee.

In 1943, this conversation I have just referred, Mrs. Newman decided to give to her daughter 800 shares of this particular stock and create a trust with Mr. Goldman as trustee.

Q. Can you state whether that conversation you [41] referred to pertained to the creation of a

(Testimony of Clarissa Shortall.)

trust in the future, or the creation of a trust immediately?

A. Definitely it would pertain to the creation of a trust immediately, because Mrs. Newman was going away.

She was not well, and she was going into a hospital in Santa Barbara, and she was most anxious to have this all settled before she left; so she stated that day that she wanted the trust immediately, and Mr. Goldman said, "You can count on it as being in effect from this day on."

Q. Did Mr. Goldman agree to hold immediately the 800 shares as trustee in an irrevocable trust?

A. Yes.

Q. Did he explain to Mrs. Newman what an irrevocable trust meant?

A. Yes, very clearly.

Q. Do you recall what was said?

A. Yes. He told her that she must realize that if she made this gift to her daughter that no matter what she did or what happened to her own finances, or what kind of a jam she might get into, that she never could touch this money, the stock, or its income; that not only could she not get the money back in any way, but she could never assume any control over it whatsoever.

She agreed to that, and said that is what she wanted. [42]

Q. Was anything said about reducing the trust to writing, or about putting the trust into writing?

A. Yes. Mr. Goldman said that he would put

(Testimony of Clarissa Shortall.)

it in writing some time in the future. He was very busy at that time. He said that she could rely on its being in existence then.

Q. You mean at once?

A. Immediately, yes.

Q. Will you state whether Mr. Goldman was the kind of a lawyer who was always behind in his work?

A. Very definitely. He practiced alone. I was the only assistant.

Mr. Boyle: Your Honor, I object to that as asking for an opinion of the witness.

The Court: I don't think there is any harm in having it in the record. We will let it stand.

Mr. Taylor: Would you read the answer, please, Mr. Reporter?

(Record read.)

Q. (By Mr. Taylor): Will you state, if you know, how long Mr. Goldman has practiced in San Francisco?

A. Approximately thirty years at that time.

Q. Did he have a successful practice?

A. A highly successful practice. [43]

Q. State, if you know, whether he had prepared many trust instruments?

A. There were many trust instruments and wills, and other matters.

Q. He had created many trusts by instrument or otherwise? A. Yes.

Q. Will you state, if you know, whether he was especially busy at the beginning of the year 1943?

(Testimony of Clarissa Shortall.)

A. Yes. The month of January was always a very busy month in the office. There was a great deal of probate work in the office, which meant end-of-the-year accountings.

In addition, we did a lot of tax work, and in January all of the tax returns were started. So that January and February were very heavy months always in the office.

Q. Will you state, if you know, when the trust was actually reduced to writing, put into writing? And in that regard, I show you Exhibit 2-B to the stipulation of facts, the document in which Mr. Goldman declared himself trustee for the minor, Lois E. Senderman, and call your attention to the fact that it is stated therein: "In Witness Whereof, I have hereunto set my hand this 1st day of January, 1943," and that Lois J. Senderman acknowledged receipt, and the acknowledgment of receipt of this document is dated January 1, 1943.

Mr. Boyle: Your Honor, the Respondent objects on [44] the grounds that the question was asked as if he wanted present recollection; and if he, on the other hand, wants past recollection he has not laid the proper foundation to get that.

The Court: Will you read the question, please, Mr. Reporter.

(Question read.)

The Court: She may answer the question.

A. The trust was put in final form and executed, to the best of my recollection, in June or maybe early July of 1943.

(Testimony of Clarissa Shortall.)

Q. (By Mr. Taylor): Was receipt acknowledged by Mrs. Newman at that time?

A. At the same time, yes.

Q. Was Mr. Goldman's office open on January 1, 1943? A. No.

Q. Will you state, if you know, the reason for the delay in the execution of a written trust?

A. Mr. Goldman was very busy, and he didn't seem to feel that there was any urgency in reducing this to writing, because he felt that there was already an irrevocable oral trust in effect, and he was so acting.

The Court: Who drew this trust?

The Witness: Mr. Goldman with by assistance to some extent.

The Court: Did you assist him in drawing up the [45] final draft?

The Witness: I should say the final draft was Mr. Goldman's, not mine.

Q. (By Mr. Taylor): Will you state, if you know, how it happened that the trust, Exhibit 2-B, as finally executed did not expressly use the word "irrevocable"?

A. Mr. Goldman felt that it was irrevocable on its face, the various provisions in the trust made it irrevocable, and that there was no necessity to use the actual word "irrevocable".

Q. I show you Exhibit 2-B, the trust, and ask that you read into the record——

The Court: That is already in the record.

(Testimony of Clarissa Shortall.)

Mr. Taylor: The trust itself is in the record, yes, your Honor.

Q. (By Mr. Taylor): I ask that you point out the provisions on which, if you know, Mr. Goldman relied?

Mr. Boyle: That is objected to as asking for an opinion. Mr. Goldman is not here. What he relied upon is certainly a nebulous thing, which we couldn't get into at this time. The record is the best evidence of that. Whatever the trust instrument is, that is the best evidence.

The Court: That is a matter for argument, I think, [46] on brief.

Mr. Taylor: If your Honor please, a very basic question in this case is whether or not this written trust is expressly made irrevocable. Evidently the Government thinks there is some question about it, because it has determined that that is not the case.

Now, under those circumstances, I respectfully submit that we are entitled to have oral evidence as to what was meant by the words used here.

The Court: That document is already in evidence. It speaks for itself.

Mr. Boyle: If your Honor please, we have a case in this circuit on this very point that has said that parol evidence cannot be introduced for this purpose. It is the case of Gaylord vs. The Commissioner, 153 Fed 2nd 408.

Mr. Taylor: Your Honor, I think it is clear that where the document is ambiguous parol evidence may be introduced.

(Testimony of Clarissa Shortall.)

The Court: Wherein is the document ambiguous?

Mr. Taylor: Well, we do not think it is, but evidently the Commissioner does because he has challenged its interpretation.

The Court: I will sustain the objection to the question that was raised.

Mr. Taylor: May I have an exception, your Honor. [47] I would like to make an offer of proof, your Honor.

The Court: Go ahead.

Mr. Taylor: I would like to state that if this witness were permitted to answer, she would testify that Mr. Goldman relied upon Paragraph II, III and V of the trust, as expressly making it irrevocable.

The Court: Did Mr. Goldman mention these three sections to you as making it irrevocable?

The Witness: Yes, he did, your Honor, not as those particular sections, but the provisions that were in those sections.

The Court: I asked you about those sections.

The Witness: Yes, I know what those sections contain.

Mr. Taylor: If your Honor please, I would like to call your attention to Chamberlayne on Trial Evidence, Section 853, page 813, which states that parol evidence is properly admitted as an aid in the interpretation of a writing for the purpose of explanation. That is my object in asking this question of the witness.

(Testimony of Clarissa Shortall.)

The Court: I am familiar with it.

Mr. Taylor: May I ask your Honor to reconsider your ruling?

The Court: Proceed with your offer of proof?

Mr. Taylor: I have made my offer of proof, your [48] Honor, that if this witness were permitted to answer she would testify that Mr. Goldman relied on what is in Paragraphs II, III and V of Exhibit 2-B as expressly making that trust, Exhibit 2-B irrevocable.

The Court: Proceed.

Q. (By Mr. Taylor): I show you Exhibit 4-D to the stipulation of facts, petition for appointment of successor trustee or trustees in place of the deceased trustee in the matter of the irrevocable trust of Lois E. Senderman, beneficiary, and Lois J. Senderman, donor and trustor and Richard S. Goldman, trustee; and I call to your attention that in Paragraph I of that Exhibit, which you executed as attorney for the Petitioner, you state that on the first day of January, 1943, Lois J. Senderman, as trustor and donor, and Richard S. Goldman, as trustee, executed a trust indenture; and it is obvious that you are referring to what is Exhibit 2-B in this stipulation of facts.

Now, I ask you what you meant by that allegation that that was executed on the first day of January, 1943.

A. I meant that it was executed as of January 1, 1943; the oral irrevocable trust had been created as of that time.

(Testimony of Clarissa Shortall.)

Q. You did not mean that this written instrument was actually executed on that date?

A. No.

Q. That instrument, you testified, was executed some six or seven months later? [49]

A. Yes.

Q. I show you Exhibit 6-F to the stipulation of facts, Petition for Appointment of Guardian of Minor, and I call to your attention that on Page 2 of that exhibit, in the third full paragraph, it is stated that on the first day of January, 1943, Richard S. Goldman, as trustee, executed a trust indenture—and that trust indenture, it is obvious from the balance, is Exhibit 2-B to this stipulation of facts.

Now, let me state that that exhibit is signed by Richard N. Goldman, executor of the estate of Richard S. Goldman, deceased, and signed by A. B. Bianchi, as attorney for the Petitioner, and it was filed with the Superior Court on May 2, 1946.

Were you associated with Mr. Bianchi at that time?

A. Yes, for a short while after Mr. Goldman's death, I was.

Q. Did you prepare that petition?

A. Yes, I did.

Q. Will you state you meant by the reference to the trust being executed on January 1, 1946?

A. I meant that it was executed as of January 1, 1946—pardon me, '43. You mean '43, don't you, Mr. Taylor?

Q. I meant to say 1943, Miss Shortall.

(Testimony of Clarissa Shortall.)

A. The oral irrevocable trust was already in effect.

Q. I show you Exhibit 9-I to the stipulation of facts, [50] Petition by Guardian for Instruction, which was filed on April 22, 1947, with the Superior Court, and which you signed as the guardian.

I call your attention to Paragraph II on page 1 of this exhibit, where it is stated that on the first day of January, 1943, Lois J. Senderman, now Lois J. Newman, the mother of said minor, Lois E. Senderman, as trustor and donor, and Richard S. Goldman, as trustee, executed a declaration of trust. It is apparent from what follows that that declaration of trust is the same as Exhibit 2-B to this stipulation of facts.

I ask you what you meant by this statement that that document was executed on the first day of January, 1943?

A. I meant that it was executed as of the first day of January, 1943.

Q. But not actually on that date?

A. No, not actually on that date.

Q. But actually some six or seven months later?

A. Yes.

Q. Was that made clear in the amended petition which you filed?

A. Yes, I think I clarified that in the amended petition, by showing that the document was executed some six or seven months later and dated as January 1, but was actually executed later. [51]

Q. Now, by the amended petition you mean Exhibit 10-J with the stipulation of facts?

(Testimony of Clarissa Shortall.)

A. Yes, that is right—2-B.

Q. The stipulation of the trust? A. 2-B.

Q. The stipulation of facts, Paragraph XIV, commencing on Page 4, states that on May 2, 1946, said Court—meaning the Superior Court of the State of California, in and for the City and County of San Francisco—issued its order appointing Clarissa Shortall as guardian of the estate of the said Lois E. Senderman.

There are attached to the stipulation as exhibits copies of the order appointing you as guardian, and of the letters of guardianship which were issued to you you on May 2, 1946.

I now ask you whether any assets of the trust for the minor, Lois E. Senderman, were transferred to you, and if so, when they were transferred.

A. They were transferred upon order of Court on the day of my appointment as guardian of the estate of Lois E. Senderman, a minor.

Q. That is, on May 2, 1946?

A. May 2, 1946.

Q. Was that transfer made solely pursuant to the Court Order appointing you a guardian?

A. Yes. [52]

Q. Until that Court Order you did not in your capacity as guardian have possession of those assets? A. No.

Mr. Boyle: Respondent objects to that. These questions are leading, and ask for conclusions of law rather than of fact.

(Testimony of Clarissa Shortall.)

The Court: Will you kindly refrain from leading questions?

Mr. Taylor: Very well, your Honor.

Q. (By Mr. Taylor): Will you state, if you know, whether Mrs. Newman had anything to do with the transfer to you of the assets of the trust on May 2, 1946?

A. Mrs. Newman had nothing to do with this entire matter of the transfer to the guardian of the assets belonging to the estate of Lois E. Senderman.

Q. Will you state whether that was true, not only on May 2, 1946, but at all other times?

A. Yes.

Q. Did she take any action with regard to such transfer? A. No.

Q. Paragraph XVI of the stipulation of facts states that on July 10, 1947, a hearing was held before the Hon. T. I. Fitzpatrick, Judge of the Superior Court—by that it meant the [53] California Superior Court—on the amended petition, which is attached as Exhibit 10-J to this stipulation; and that evidence, both oral and documentary was offered; and that the Court issued its Order pursuant to said amended petition.

Now, I ask you to state whether or not the issue as to if Mrs. Newman had created an irrevocable trust for her daughter was fully argued?

A. Yes, it was. Mrs. Newman had her own counsel at that hearing and the Court asked her many questions, as well.

(Testimony of Clarissa Shortall.)

Q. Now, will you state how you happened to file a petition for instructions with the Superior Court, Exhibit 9-I to the stipulation of facts, and the amended petition, Exhibit 10-J?

A. Yes. The Internal Revenue Agent at that time had raised the question.

Mr. Boyle: If your Honor please, the witness is not testifying from notes, is she?

The Witness: I haven't any—a handkerchief.

The Court: Proceed.

Q. (By Mr. Taylor): The answer to Mr. Boyle's question is "no"?

A. No. The Internal Revenue Agent about that time had raised the question of the irrevocability of the trust for Lois E. Senderman, the minor. Up until that time neither I, nor Mr. Goldman, nor Mrs. Newman had ever considered the trust could [54] possibly be revocable.

Q. Could be what?

A. Revocable. When Mr. Goldman died, shortly thereafter—I believe it was in the month of May 1946—I turned over to Mrs. Newman some \$205,000 in cash and securities, which had been held by Mr. Goldman as trustee.

Q. You mean trustee for Mrs. Newman?

A. For Mrs. Newman, yes.

Q. That is the revocable trust referred to?

A. That is the revocable trust for Mrs. Newman.

In addition, she received the 17 per cent interest in the partnership of the Aztec Brewing Company.

From May of 1946 until about June of 1947,

(Testimony of Clarissa Shortall.)

Mrs. Newman in addition had received some \$320,000 in distribution of partnership profits from the Aztec Brewing Company.

Q. That represented her share?

A. That represented her share, 17 per cent interest partner.

In 1947, in spite of receiving all of this money, Mrs. Newman requested an allowance for the support of her daughter. Until the end of 1946 she had assumed the full support of her daughter, and the daughter's assets were accrued. Nothing was spent personally for the daughter.

Q. You mean accumulated? [55]

A. Accumulated, yes; I am sorry.

And her reason for asking for an allowance, which she suggested be \$7,500 a year, was that she was not financially able to take care of her daughter at that time.

For that reason, and because of other knowledge that I had, I realized that Mrs. Newman was spending a great deal of money. I knew that Mrs. Newman gambled. And I was rather concerned that she might find herself in a position where, because of the suggestion that was put in her mind by the Internal Revenue Agent that the trust could be revoked, she might be tempted to revoke the trust, and get some of the money back.

Q. You mean she might try to?

A. Yes. For that reason, I thought it would be a very good idea to have a ruling of the Superior Court, under whose jurisdiction I was as guardian,

(Testimony of Clarissa Shortall.)

regarding the particular document, whether it was revocable or irrevocable.

This, of course, had nothing to do with the taxes, but as a secondary motive I wanted to have it satisfied once and for all that the trust was irrevocable, because of the contentions of the Revenue Agent.

Q. Now, when you are referring to the Revenue Agent's examination, and his contention that the trust was revocable, do you mean his examination of the gift tax return for 1943, or of the income tax returns for 1943 and subsequent years? [56]

A. In my recollection, at the end of '46, or the beginning of 1947, the income tax returns for the minor for the years '43, '44, and I believe '45, were being examined.

Q. Is that true also of the income tax returns of Mrs. Newman?

A. Yes, they were all examined at that time.

Q. So your testimony refers to the income tax returns?

A. The income tax returns only.

Q. If you felt that there was danger of Mrs. Newman contending that the trust was a revocable trust, will you state how it happened that Mrs. Newman testified in the Superior Court proceeding that the trust was irrevocable?

A. Mrs. Newman is a very truthful woman, and she testified to the truth in court. I wasn't particularly concerned right at that moment, but it was for the future.

I knew that she was spending her money, the income, as well as selling securities that had been

(Testimony of Clarissa Shortall.)

turned over to her, and I was afraid that some time in the future she might find herself in bad financial straits. In fact, she did. By the end of 1947, [57] she did come to me and ask for a loan for necessary living expenses until the next brewery dividend was paid.

Q. Her money had gone in gambling?

A. To the best of my knowledge—or dissipating it some way.

Q. I show the Notice of Deficiency, which is Exhibit A to the petition and to the amended petition in this case, and call to your attention that on page 2 it is stated in the notice of deficiency that on or about May 2, 1946, there was distributed to Clarissa Shortall, as guardian of the estate of Lois E. Senderman, a minor, certain properties. Then there is an itemization of those properties, beginning with Cash, \$24,577.39, and going down through 8 per cent interest as limited partner of Aztec Brewing Company, a limited partnership, \$175,000.

Now, so that the record may be clear, I am not reading the last item in that list at the moment, pertaining to an alleged over-payment of income tax and accrued interest; but calling your attention to the items beginning with Cash, and going through that 8 per cent limited partnership interest; and also calling your attention, incidentally, to the fact that Paragraph XXII of the stipulation of facts states that the value of that 8 per cent interest in 1946 was \$151,051.09, and not \$175,000,

(Testimony of Clarissa Shortall.)

as stated on Page 2 of the 90-day letter; and I ask you to examine all of those items, beginning with [58] Cash and going through the 8 per cent interest, and after your examination I ask you to state whether all of those items had their source in the transfer of 800 shares of Aztec Brewing Company stock in trust for Lois E. Senderman, Petitioner's daughter, in 1943?

A. Yes, everything in this list was purchased with the proceeds of the original 800 shares of stock in the Aztec Brewing Company, the income from which was transferred to the trust.

Q. Or the partnership earnings, into which it is stipulated the stock was converted?

A. Yes.

Q. Now, I call your attention to the last item on page 2 of the Notice of Deficiency, Exhibit A to the petition in this case—

A. This is the page I am looking at right here.

Q. Now, that item is designated, "Overpayment of Income Tax and Accrued Interest for the Years 1943 to 1945, \$64,035.05." I ask you whether that item was distributed to you on or about May 2, 1946.

A. No, I never considered that there was an overpayment.

Q. When I say "distributed to you", I mean distributed to you as guardian.

A. No, never was. [59]

Q. Has it ever been distributed to you?

A. No.

Q. Will you state if you were aware on May

(Testimony of Clarissa Shortall.)

2, 1946, that there might be a contention made by the Government that there were over assessments in income tax due to the trust?

A. No, I wasn't aware. I never thought there was an overpayment made.

Q. When did you first become aware that there would be such a contention.

A. After the Revenue Agent started to examine the various returns and made the contention that the trust was revocable. That was in 1947. I believe it was 1947, the first part of 1947 sometime.

Q. But in any event, well after May 2, 1946?

A. Oh, yes.

Q. Now, so that the record may be clear, let me ask you this question: Paragraph XX of the stipulation of facts states that by means of letters of the type commonly known as 30-day letters, addressed to the trust and to the minor, both of which are dated August 25, 1949, the Internal Revenue Agent in charge of the San Francisco Division proposed over assessment of income tax in favor of the trust and of the minor, as follows—and then the over assessments are listed for 1943, '44, and '45, and they aggregate \$62,763.47. [60]

Now, the item set forth as the last item on page 2 of the Notice of Deficiency, which refers to the alleged overpayment of income tax and of an alleged interest thereon come to \$64,035.05. Will you state, if you know, whether the difference between \$62,763.47 and \$64,035.05 is alleged accrued interest on the overpayment?

(Testimony of Clarissa Shortall.)

A. Yes, that was the accrued interest.

Q. Paragraph XXI of the stipulation of facts states that by means of a Notice of Deficiency dated January 23, 1951, the Commissioner has determined deficiencies in income tax against the Petitioner—that is, Mrs. Newman—for the calendar years 1943 to 1947. It then sets forth those alleged deficiencies. And it is further stipulated that these deficiencies are based mainly, and that the over assessments in favor of the trust and of the minor, to which you have just testified, are based wholly upon including in Petitioner's income all of the income reported by the trust and by the minor during the calendar years 1943 to 1947, inclusive, except that the deficiency for 1944 is based upon an addition to the Petitioner's income of approximately \$78,000, of which approximately \$20,000 represents income reported by the minor.

The Court: To what are you addressing these questions, to what phase of the case?

Mr. Taylor: These questions, your Honor,—and this is about my last question, I have just one more—pertain to [61] the question, which it is difficult to understand without examining the stipulation, as to whether or not, assuming there was some sort of gift in 1946, the gift included the \$64,000 alleged overpayment in income tax. That is the purpose. It is to clarify what has been stipulated.

The Court: Very well.

Q. (By Mr. Taylor): Now, you have in mind

(Testimony of Clarissa Shortall.)

the question as I have asked it to you up to now?

A. Yes, Mr. Taylor.

Q. Then I want to ask you to state if the Petitioner should lose the income tax case, and you as guardian should receive the alleged over assessments in income tax plus interest thereon, would you keep those alleged over assessments and interests thereon?

Mr. Boyle: That, your Honor, of course, is a legal conclusion.

The Court: What difference does that make?

Mr. Taylor: It has a direct bearing on whether or not there was a gift of the alleged over assessments in 1946.

The Court: Not what she would do with these overpayments, if they were made.

Mr. Taylor: I think, your Honor, it has a bearing on whether or not there was a gift of this item of \$64,000 plus in 1946. [62]

Mr. Boyle: Your Honor, that would be a legal conclusion. She stands as guardian. What she does or does not do is something which, under the law, must be decided.

Mr. Taylor: I may state, your Honor, that it is difficult to see the purport of this question without studying the stipulation, because most of these facts on this point have been stipulated.

The Court: Proceed. I don't see the relevancy.

The Witness: Do you want me to answer the question now?

Mr. Taylor: Please.

(Testimony of Clarissa Shortall.)

The Witness: No, I don't think they were ever an asset of the guardianship estate. If by any chance the overpayments were to be made, I would immediately request authority from the Superior Court of this City and County to turn them over to Mrs. Newman. I don't think they ever belonged to the guardianship estate.

Q. (By Mr. Taylor): Paragraph VII of the stipulation of facts states that the Petitioner filed a State of California gift tax return for the calendar year 1943——

Mr. Boyle: If your Honor please, just so the record will show, the Respondent has objected to the introduction of Paragraphs VII and VIII of the stipulation of facts, and that is what counsel for the Petitioner is reading from now. [63]

The Court: Proceed.

Mr. Taylor: I will repeat.

Q. (By Mr. Taylor): Petitioner filed a State of California gift tax return for the calendar year 1943, in which the Petitioner reported a transfer of 800 shares of Aztec Brewing Company stock to her daughter. Said return was filed with the Comptroller of the State of California on or about April 15, 1944.

That is what Paragraph VII of the stipulation of facts states.

Now, will you state, if you know, whether a copy of the trust, Exhibit 2-B to the stipulation of facts, was attached to that State of California

(Testimony of Clarissa Shortall.)

gift tax return for 1943? A. Yes, it was.

Mr. Taylor: Your witness, Mr. Boyle.

Cross Examination

Q. (By Mr. Boyle): Miss Shortall, you have testified that you helped prepare the trust instrument in 1943? A. Yes.

Q. And you have testified that you were familiar with the contents of Paragraphs II, III and V? A. Yes.

Q. Will you relate the contents of Paragraph II of that trust? [64] A. Paragraph II—

Mr. Taylor: Do you want her to do it from memory, Mr. Boyle?

Mr. Boyle: Yes, from memory.

A. Well, I believe Paragraph II is the one which stated that Mr. Goldman will hold the property for the benefit of the minor, and upon the termination of the trust will turn the property over to Lois E. Senderman, the minor.

Q. Is that all?

A. Oh, there are probably other things in it, Mr. Boyle. I haven't memorized it.

The Court: Just a minute. That is a rather unfair question, calling for her to remember details of the paragraph.

Q. (By Mr. Boyle): Are you aware of the fact that the fact that the minute book of the probate clerk and the reporter's records show that the hearing of July 10, 1947 only two people were present—that is, Mrs. Newman and yourself?

(Testimony of Clarissa Shortall.)

A. No, I am not aware of that.

Mr. Taylor: I object. I move to strike the question and answer, your Honor. No proper foundation has been laid. It is incompetent, irrelevant and immaterial, and hearsay.

The Court: Motion is granted. [65]

Q. (By Mr. Boyle): I have in my hand here Exhibit 4-D, entitled "Petition for Appointment of Successor Trustee or Trustees in Place of Deceased Trustee," which you have signed as attorney for the Petitioner; also Exhibit 6-F, entitled "Petition for Appointment of Guardian of Minor;" and also Exhibit 9-I entitled "Petition by Guardian for Instructions"; in which no mention was made of the existence of an oral trust. Is there any reason why that was omitted from those petitions with the Court?

A. No reason that I know of.

Q. Now, Exhibit 4-D, which was filed April 5, 1945, Exhibit 6-F, filed May 2, 1946, and Exhibit 9-I, filed April 22, 1947, while containing no reference to an oral trust, are different from Exhibit 10-J, which was filed June 23, 1947—and Exhibit 10-J was signed by you, and is entitled "Amended Petition by Guardian for Instructions."

Now, can you state why this last amended petition for instructions by you for the first time brought out the existence of the oral trust?

A. I realized that the first petition, 9-J, I believe it is, didn't really conform to the facts as they were, and that it should be corrected. I dis-

(Testimony of Clarissa Shortall.)

cussed it with Mr. Taylor, and we corrected it by way of an amended petition.

Q. Were you aware when you filed the previous petitions that the oral trust was in existence?

A. Yes, I was already aware of it. [66]

Q. When you stated in those petitions merely that there had been a written declaration dated January 1, did you not feel maybe you were omitting something?

A. No, I didn't feel that.

Mr. Taylor: Would you please repeat the answer?

The Witness: No, I thought they were sufficient as they stood for the purpose for which they were filed.

Q. (By Mr. Boyle): When was Mr. Taylor first retained by you as attorney on these matters?

Mr. Taylor: I object to the question. That is too vague.

The Court: I think it is sufficiently explicit. She may answer.

A. After Mr. Goldman's death—he died on March 1, as I have already testified—the income tax returns for 1945 had not been prepared or filed, and I was obviously going to take care of Mrs. Newman's and her daughter's legal affairs from the time of Mr. Goldman's death, and I didn't want to assume the full responsibility for the taxes. I didn't feel that my knowledge was sufficient. So I would say it was sometime towards the end of March 1946, that I first spoke to Mr.

(Testimony of Clarissa Shortall.)

Taylor. I was then in the same building that his office was in, and I had known him from other matters, when we discussed it for the first time.

Later on, within the next few weeks, I spoke to Mrs. Newman and asked her if she wanted Mr. Taylor to handle tax matters for her, and she met him and said, yes, she did.

That is as close as I can remember it. I don't know that that would pertain to these particular matters, but that is the first time that Mr. Taylor was employed or had anything to do with either the Newman or Senderman affairs.

Q. Did the fact that you mentioned for the first time in June 1947 that there was such a thing as an oral trust, have anything to do with the tax liabilities in this case?

Mr. Taylor: I object. No, I will not object. You can answer.

A. No, I stated what my motives were for bringing the petition. There were two reasons. One was that I wanted it clarified for the tax revenue agent who was examining the returns, and I wanted clarification on account of Mrs. Newman, as I have already testified. And I didn't feel that the first petition was really accurate and covered all of the facts. I wanted it to show that there was an oral trust right from the start.

Q. Did the fact that the Krag Decision came down in the meantime, between April and June, have anything to do with inserting the provision as to the oral trust?

(Testimony of Clarissa Shortall.)

Mr. Taylor: I object to the question. It is immaterial, incompetent and irrelevant; no proper foundation laid. [68]

The Court: What is the Krag Case?

Mr. Boyle: That is a very similar case to this, your Honor. It was tried here, and involves people in Marin County.

It is a decision of the Tax Court in 8 TC 1091, in which case the husband and wife had made a deed of stock to a daughter, filed a gift tax return, and later they found out that the lawyer had been mistaken and it was not irrevocable, but revocable, and he attempted to make it irrevocable for the first time.

The Court: That is sufficient.

Mr. Boyle: And in doing so——

The Court: That is sufficient. No foundation has been laid to show that she knows anything about the Krag case.

Mr. Boyle: Well, my question could be answered yes or no, then, couldn't it, your Honor?

The Court: If you wish to pursue this, ask whether she is familiar with it.

Mr. Boyle: I will drop it, your Honor.

Q. (By Mr. Boyle): You stated in the petition filed for instructions on April 22, 1947, that in reducing the alleged oral trust to writing, through inadvertence and error no provision was made as to irrevocability. [69]

M. Taylor: Would you please identify the ex-

(Testimony of Clarissa Shortall.)

hibit number so that the record won't be confused?

Mr. Boyle: Exhibit 9-I.

Q. (By Mr. Boyle): Did you feel at that time that an error had been made in reducing the oral trust to writing, by the omission of a specific provision as to irrevocability?

A. What I meant by that was that the word "irrevocable" had not been used in the trust declaration.

Q. Did you feel that the omission of that word might make the trust revocable?

A. No. I at all times felt that the trust was irrevocable.

Q. Did you feel that an error had been made?

A. Well, after all, at that time the Revenue Agent had said that it was an error. I never felt that it was an error, but as I told you, I wanted to correct this for all purposes, and the Revenue Agent said that that particular word had to be on the face of the document. Then I thought it was a mistake that it wasn't.

My own interpretation of the document, as well as Mr. Goldman's, was that on its face it was irrevocable because of the provisions of it.

Q. You have testified that at the hearing held July 10, 1947, the order pursuant to which is marked Exhibit 11-K, Mrs. [70] Newman testified to the effect that the trust was considered irrevocable; is that correct? A. Yes.

Q. Was June 1947 the first time that the oral trust, or the possible existence of the oral trust

(Testimony of Clarissa Shortall.)

was ever mentioned in any documents in this case?

A. To the best of my knowledge, it probably is. I can't answer exactly, Mr. Boyle. I am pretty sure it is, but there may be something before that where it was mentioned.

Mr. Boyle: That is all, your Honor.

The Court: Have you any other questions, Mr. Taylor?

Mr. Taylor: I just have a few, your Honor, to clarify a few things.

Redirect Examination

Q. (By Mr. Taylor): Miss Shortall, so that the record may be clear, I show you Respondent's Exhibit N, being the income tax return for Lois J. Newman for the calendar year 1945, and ask you to state for the record from the return who prepared that return.

A. That was Mr. Frank H. Baker, who was a Certified Public Accountant, who handled the Newman-Senderman accounts for Mr. Goldman—the bookkeeping end of it.

Q. So that you did not mean to testify that I prepared the 1945 return? [71]

A. Oh, no, Mr. Taylor. You weren't consulted until after those were filed. They were what made me worry about taxes, and I wanted a tax expert to handle it.

Mr. Goldman had examined them in previous years, and I didn't feel that I was competent to

(Testimony of Clarissa Shortall.)

do it, and I wanted somebody who knew about taxes to handle those matters.

Q. You consulted me about Mrs. Newman's tax situation, but you did not request me to prepare her 1945 return?

A. No, they were already prepared before I consulted you. It must have been the end of March or the first of April when I first talked to you. I am not sure. It may have been the end of April.

Q. Do you recall whether you first thought of me because Mrs. Newman objected to Mr. Bianchi having anything to do with her affairs?

A. Yes.

Mr. Boyle: Respondent objects to the question as leading.

The Court: The question is leading, but no harm is done by it.

Proceed, have you any other questions?

Mr. Taylor: Yes, just one more.

Q. (By Mr. Taylor): Mrs. Newman testified that she wasn't sure whether you were present or not at the conference with Mr. Goldman at [72] which the oral trust was created. A. Yes.

Q. You were present?

A. Oh, yes, I was present.

Mr. Taylor: That is all.

Mr. Boyle: No more questions, your Honor.

The Court: You are excused.

(Witness excused.)

The Court: Have you any other witnesses?

Mr. Taylor: That is all. Petitioner rests, your Honor.

Mr. Boyle: If your Honor please, the Respondent is not certain as to the legal approach that is going to be made by Petitioner, and therefore request is made that alternative briefs be allowed, in order that the issues may meet and that we may speak upon the same plane of discourse.

The Court: How much time do you need for an opening brief, Mr. Taylor?

Mr. Taylor: Your Honor, we would like, if possible, two months, but we have no objection to alternative briefs.

The Court: Very well, sixty days for Petitioner's brief; forty-five for Respondent to reply, and thirty for Petitioner to reply.

There being nothing further to come to the Court's attention, we will recess until Monday morning, 9:30 o'clock. [73]

(Whereupon, at 4:50 p.m., the hearing in the above entitled matter was closed.)

[Endorsed]: T.C.U.S. Filed Nov. 20, 1951.

[Title of Tax Court and Cause.]

STIPULATION REGARDING CORRECTIONS TO TRANSCRIPT

It is hereby stipulated by and between the parties hereto, through their respective counsel, that

the following corrections should be made to the Transcript of the proceedings before this Court:

1. The word "guardians" on line 16 of page 3 should be "guardian".

2. The second full paragraph on page 8 should read as follows:

"Finally, we contend that if this Court should determine that there was a transfer of property by gift or for less than an adequate and full consideration in money or money's worth during 1946, then such transfer was effected by a Court decree, and such transfer, under the doctrine of the United States Supreme Court in *Harris vs. Commissioner* 340 U.S. 106, was not subject to gift tax."

3. The word "trustor" on line 12 of page 10 should be "trustee."

4. Line 13 on page 10 should read as follows: "if this Court holds that the gift was made in 1946, those taxes".

5. Line 15, of page 10 should read as follows: "corpus in 1946 if they had not been erroneously paid; and also"

6. The word "gone" in line 1 on page 16 should be "done."

7. The word "estate" on line 13 of page 25 should be "or State."

8. The word "attempted" on line 15 of page 31 should be "attended."

9. The figures "1944" on line 22 of page 37 should be "1943."

10. The word "secret" on line 19 of page 56 should be "secondary."

11. The word "Craig" on line 21 of page 68 and on lines 1 and 15 of page 69 should be "Krag."

Dated: San Francisco, California, December 20, 1951.

/s/ SAMUEL TAYLOR,
/s/ WALTER G. SCHWARTZ,
Counsel for Petitioner.

/s/ MASON B. LANSING,
Counsel for Respondent.

[Endorsed]: T.C.U.S. Filed Dec. 26, 1951.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 20, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Designations as to Contents of Record on Review" in the proceeding before The Tax Court of the United States entitled "Lois J. Newman, (Formerly Lois J. Senderman), Petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket No. 29650" and in which the petitioner and respondent in The Tax Court proceeding have initiated appeals as above numbered and entitled, together with a true

copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 20th day of October, 1953.

[Seal]: /s/ VICTOR S. MERSCH,

Clerk, The Tax Court
of the United States.

[Endorsed]: No. 14112. United States Court of Appeals for the Ninth Circuit. Lois J. Newman (formerly Lois J. Senderman), Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed November 2, 1943.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 14112

LOIS J. NEWMAN,

Petitioner

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS

Comes now Lois J. Newman, petitioner on review in the above-entitled cause, by her attorneys Gang, Kopp & Tyre by Martin Gang and Norman R. Tyre, and Irell & Manella by Louis M. Brown, and hereby states that she intends to rely upon the following points in this proceeding. The petitioner assigns as error the following acts and omissions of the Tax Court of the United States:

(1) The ruling that the completed gift did not occur in 1943 is contrary to the evidence.

(2) The ruling that the completed gift occurred in 1946 is contrary to the evidence.

(3) With no conflicting evidence, finding facts contrary to the evidence presented.

(4) Disregarding the order of the Superior Court in and for the County of San Francisco, California.

(5) Failing to recognize the substance, rather than the form, of a transaction.

(6) The finding of deficiency of gift tax for the year 1946.

(7) The finding that Richard S. Goldman declared himself trustee.

(8) Failing to find taxpayer on January 1, 1943 declared Richard S. Goldman Trustee of irrevocable trust.

(9) Failing to find that taxpayer had no donative intent in 1946.

(10) Holding that the trust became irrevocable upon appointment of guardian.

GANG, KOPP & TYRE and
IRELL & MANELLA

/s/ By LOUIS M. BROWN,
Attorneys for Petitioner.

[Endorsed]: Filed Dec. 2, 1953. Paul P. O'Brien,
Clerk.

[Title of U.S. Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON REVIEW

To the Clerk of the United States Court of Appeals for the Ninth Circuit:

The petitioner hereby designates the following documents and records in the above-entitled cause:

(1) The docket entries of all proceedings before the Tax Court.

(2) Pleadings before the Tax Court, as follows:
(a) Petition; (b) Answer; (c) Amended Petition filed November 2, 1951; (d) Answer to Amended Petition filed November 2, 1951.

- (3) Stipulation of facts filed November 2, 1951.
- (4) The findings of fact and opinion of the Tax Court.
- (5) The decision of the Tax Court.
- (6) The petition of Newman for review.
- (7) The entire official transcript of oral testimony.
- (8) Stipulation regarding corrections to transcript filed December 26, 1951.
- (9) Exhibits 1-A through and including 12-L, and petitioner's Exhibits 13 and 14.
- (10) This designation of contents of record on review.
- (11) Statement of Points.

GANG, KOPP & TYRE and
IRELL & MANELLA

/s/ By LOUIS M. BROWN,
Attorneys for Petitioner.

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